

**WISCONSIN  
ADMINISTRATIVE CODE**

**HFS 54  
CHILD PLACING AGENCIES  
Annotated**

*April, 2006*

**Bureau of Regulation and Licensing  
Division of Children and Family Services  
Department of Health and Family Services**

## **PREFACE**

### **CHAPTER HFS 54**

#### **CHILD-PLACING AGENCIES**

#### **ANNOTATED**

**04/2006**

Section 48.60, Wisconsin Statutes, requires that Child Placing Agencies be licensed. The statute also requires the Department of Health and Family Services to establish rules which must be met in order to qualify for a license and which protect and promote the health, safety and welfare of children.

Chapter HFS 54 is the administrative code governing Child Placing Agencies which are child welfare agencies that place children in licensed family foster homes and licensed group homes.

The purpose of this document Child-Placing Agencies-Annotated is to help users of HFS 54 understand the intent and application of the rule.

The portion of this document that is numbered and in regular print is the administrative rule, HFS 54 and was prepared using the Wisconsin Administrative Register, No. 588, dated December 2004. The portion of the document that is in *italicized print* on the right hand side of each page is the annotated language that was prepared by staff in the Bureau of Regulation and Licensing in the Department of Health and Family Services.

There is a header on each page that contains the rule cite for the section of the rule beginning on that page. A table of contents is included in this document as are appendices that contain key statutes related to the child placing agency rule, a copy of HFS 12 (administrative rules governing caregiver background checks), and other appendices that provide additional valuable information and guidance.

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**HFS 54.01 Introduction.**

(1) **PURPOSE.** The purpose of this chapter is to protect and promote the health, safety and welfare of children in the care of child-placing agencies.

(2) **APPLICABILITY.** This chapter applies to all child-placing agencies.

(3) **EXCEPTIONS TO RULES.** The department may make exceptions to any of the rules for licensing child-placing agencies when the department is assured that granting such exceptions is not detrimental to the health, safety and welfare of children.

*Form CFS-297 Request for Exception is the preferred format for the request; a request in the form of correspondence will be accepted as an alternative. The request must include the rule number to which an exception is being requested; the signature of the licensee or other person or persons within the agency to whom the authority to sign official documents or correspondence has been delegated in writing; and the alternative proposal that meets the intent of the rule. The alternative proposal may not be implemented by the CPA unless approval is granted by the department.*

(3m) **COMPLIANCE WITH ADMINISTRATIVE RULES AND LAWS.** A person who is licensed under this chapter shall operate the agency in compliance with this chapter, the provisions of the license, and applicable state, federal, and local law.

(4) **DEFINITIONS.** (a) “Board of directors” means the policy-making body which governs a child welfare agency.

(b) “Child” means a person under 18 years of age.

*“Child” means a person under 18 years of age or a person age 18 or older who remains under the jurisdiction of the juvenile court.*

(c) “Child custody proceedings” has the meaning prescribed in the Indian Child Welfare Act, 25 USC 1903(1), and as provided in that act includes foster care placements, termination of parental right proceedings, pre-adoptive placements and adoptive placements.

(d) “Child-placing agency” means a child welfare agency licensed to place children in licensed family foster homes and licensed group homes.

(e) “Child welfare agency” means any person required to be licensed under s. 48.60, Stats.

**54.01(4)(f)**

(f) “Department” means the Department of Health and family services.

(g) “Division” means the department’s division of children and family services.

(h) “Guardian” means the person or agency appointed by a court to make major decisions affecting a child which may include consent to marriage, to enlistment in the armed forces, to major surgery and to adoption, or to manage the estate of a minor.

(i) “Indian child” has the meaning prescribed in 25 USC 1903(4), namely, any unmarried person who is under age 18 and is either a member of an Indian tribe or eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(j) “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the U.S. secretary of the interior because of their status as Indians.

(k) “Legal custodian” means the person or agency to whom a court has transferred a child’s legal custody, and who thereby has the right and duty to protect, train and discipline the child and to provide for the child’s care needs. “Legal custody” has the meaning prescribed in s. 48.02(12), Stats.

**HFS 54.02 Organization and administration.**

(1) INCORPORATION. Every child welfare agency shall be incorporated. Any agency incorporated outside of Wisconsin shall secure authorization from the secretary of state to do business in Wisconsin.

(2) BOARD OF DIRECTORS. (a) Every agency shall be governed by a board of directors which is responsible for the operation of the agency according to its defined purposes.

(b) If the agency is incorporated in another state, the board of directors shall:

*Every CPA must have a Board of Directors, even if it is only for an advisory purpose.*

**54.02(2)(b)1.**

1. Meet in Wisconsin at least once during the period for which the license is issued, or

2. Have a subcommittee of at least 3 Wisconsin residents one of whom shall be a member of the board. This subcommittee shall be responsible to the board of directors to see that board policies are carried out and that there is adherence to licensing rules.

(c) When requested, the board, or its subcommittee if it is in the category covered by par. (b)2., shall meet with its licensing representative.

(d) The board shall:

1. Define its responsibilities. These responsibilities shall include:

a. The establishment of policies to be followed by the agency and regular planned review of policies and purposes of the agency to determine that the interests of children are being served.

b. Surveillance that the agency does not discriminate in its personnel practices, intake and services on the basis of race, color and national origin.

c. The exercise of trusteeship for property, investment and protection from liability.

d. Approval of the budget and responsibility for obtaining and disbursing of funds.

e. Employment of a qualified executive and delegation to that executive the responsibility for the administration of the agency and the employment of other staff members.

2. Meet at least semiannually and keep minutes of each meeting which shall be made a part of the permanent records of the agency.

3. Keep informed to ensure that the agency fulfills its functions.

4. Consult with the department prior to the establishment of a new agency or the changing of a basic program of care of an existing agency or the extension of service into additional program or geographic areas.

**54.02(2)(d)5.**

5. Notify the department when there is a change in the executive of the agency and/or the chief officer of the board.

6. Notify the department of any major changes pending or occurring in the corporate structure, organization or administration of the agency.

*If an agency voluntarily closes, the CPA shall submit written notice to the Department specifying: the last day of operation; the names of all children in foster/pre-adoptive homes; the names and addresses of all foster homes licensed by the CPA; and a written plan that ensures adequate and appropriate care is arranged for all children in care.*

*The CPA shall also provide written notice of the intent to close to all agencies/parents having children in placement.*

*CPA-Adoption agencies shall arrange for pending adoptive applicants or those requiring post-placement services to be transferred to another licensed CPA authorized to do adoptions; and, for children under the CPA's guardianship, shall arrange for the transfer of guardianship to another licensed CPA authorized to accept guardianship.*

*All closed adoption records shall be forwarded to the DCFS Adoption Search Program.*

(3) APPLICATION. (a) The board shall submit to the department an application to operate an agency in a form prescribed by the department for a license. The application shall be signed by the chief officer of the board and the agency executive. It shall not operate the agency until it receives such a license.

**Note:** An application form may be obtained from the Department's website at <http://www.dhfs.wisconsin.gov> or by writing or telephoning any field office listed in Appendix A.

(b) If the board is applying for a license for the first time the application shall be submitted at least 60 days prior to the date on which it proposes to begin operation.

(c) The following material shall accompany the first application for a license:

**54.02(3)(c)1.**

1. A copy of the articles of incorporation and if existent, a copy of the constitution and by-laws.

2. Evidence of the availability of funds to carry the agency through the first year of operation.

3. A statement of purpose which includes a description of the geographic area to be served, the types of children to be accepted for care, the services to be provided and the program objectives.

4. A general description of each type of position proposed for the agency.

5. A proposed organization chart insuring that there will be staff in number and qualifications for the scope of the agency services.

6. A list of board members including the addresses of the officers of the board.

(d) Subsequent applications shall be submitted to the department:

1. At least 3 weeks prior to the expiration of the current licensing.

2. When an additional office is to be opened.

3. When a new program subject to licensing is to be initiated.

4. When the geographic area served is to be extended.

5. When the address of the agency is to be changed.

6. When the name of the agency is to be changed.

(e) Subsequent applications shall be sent with the following materials:

1. Copies of the annual reports published since the last license was issued.

*The agency should have at least \$25,000 available for operating expenses for the first year of operation. This \$25,000 may be a line of credit, cash, or a loan.*

*The geographic area to be served is limited to an area within a 200 mile radius from the CPA main office or branch office unless the agency can provide an acceptable written plan for being available to families and children for placement/post placement services and in case of emergencies.*



**54.02(3)(e)2.**

2. The budget for the current fiscal year and the most recent financial audit.

3. A list of the current members of the board of directors and its committees.

4. The number, names, qualifications and classifications of current staff.

5. A copy of the current staff organization chart.

6. A description of any program review and evaluation and changes in program content and purpose which have occurred since the last license was issued.

7. If the expiring license is provisional, a statement showing whether the requirements on which a provisional license was based have been met, or if not, plans for meeting them.

8. A copy of any revisions of personnel practices that have been made since the last license was issued.

9. Upon the request of the department, a copy of the current staff development and in-service training plan.

(em) Within 60 days after receiving a complete application for a child-placing agency license, the department shall either approve the application and issue a license or deny the application. If the application for a license is denied, the department shall give the applicant reasons, in writing, for the denial.

(er) Pursuant to s. 48.60, Stats., before the department may issue or continue a license under par. (em), the department shall review the need for additional placement resources that would be made available by licensing or continuing the license of any child welfare agency after August 5, 1973, providing care under s. 48.61(3), Stats. If the department's review fails to indicate the need for additional placement resources neither the department nor the department of corrections may make any placements to any child welfare agency.

(f) A written amendment to the license shall be secured from the department by the board of directors prior to any changes in the conditions of the current license.

(g) When a license is granted, the board shall display the certificate of license in a prominent place in the agency.

(3m) LICENSE DENIAL OR REVOCATION. The department may deny, revoke or suspend a license, initiate other enforcement actions specified in this chapter or in ch. 48, Stats., or place conditions on a license if the applicant or licensee, a proposed or current employee, a volunteer or any other person having regular contact with the children, has or has been any of the following:

(a) The subject of a pending criminal charge for an action that substantially relates to the care of children or activities of the center.

(b) Convicted of a felony, misdemeanor or other offense that substantially relates to the care of children or activities of the center.

(c) Determined to have abused or neglected a child pursuant to s. 48.981, Stats., or has been determined to have committed an offense which substantially relates to the care of children or the activities of the center.

(d) The subject of a substantiated finding of misconduct in the department's nurse aide registry under s. HFS 129.10.

***HFS 129.10 Registry. (1)***  
***ESTABLISHMENT AND MAINTENANCE.***

*(a) The department shall establish and maintain a registry of persons who have satisfactorily completed a nurse's assistant, home health aide or hospice aide instructional program and competency evaluation program or only a competency evaluation program, or who otherwise meet the requirements of or are exempt under s. 146.40(2), Stats., and request inclusion in the registry.*

*(b) If an individual has satisfactorily completed in another state a nurse's assistant, home health aide or hospice aide instructional program and competency evaluation program, or only a competency evaluation program, which meets federal requirements for the program and which provides training and evaluation equivalent to Wisconsin's program,*

**54.02(3m)(d) continued**

*that individual shall be eligible for listing in the registry under par. (a).*

**Note:** *The registry under this chapter is the list of qualified caregivers required under s. 146.40(4g)(a)1., Stats. It is one of 2 parts of the Department's caregiver registry required under s. 146.40(4g), Stats. See ch. HFS 13 for the other part, the list of caregivers who have been found to have abused or neglected a client or misappropriated a client's property.*

**(2) CONTENT OF REGISTRY.** *Information in the registry shall include the registrant's:*

*(a) Eligibility for employment in a department-approved hospital or a department-licensed nursing home or facility for the developmentally disabled, or with a department-licensed home health agency or a hospice certified under 42 USC 1395 to 1395ccc;*

*(b) Social security number;*

*(c) Full name, including middle initial;*

*(d) Mailing address;*

*(e) Date of birth;*

*(f) Date of completion of instructional program, if applicable;*

*(g) Date of completion of competency evaluation program, if applicable;*

*(h) Competency evaluation program number, if applicable; and*

*(i) Date of completion of program approved under s. HFS 129.09, if applicable.*

**(3) NOTIFICATION OR APPLICATION.**

*(a) The examiner of a competency evaluation program shall notify the department when an individual has satisfactorily completed the program. The notification shall be in writing on a form provided by the department and shall be submitted to the department within 30 days after the individual satisfactorily completes the program.*

*(b) A person who is eligible under sub. (1) for inclusion in the registry but for whom notification is not required under par. (a), or a hospital, nursing home, facility for the developmentally disabled, home health agency or hospice on behalf of that person, may apply to the department to include that person in the registry. Application shall be made on a form provided by the department.*

**54.02(3m)(d) continued**

**Note:** To obtain a copy of the notification/application form for adding a nurse's assistant, home health aide or hospice aide to the registry, write to the Bureau of Quality Assurance, Caregiver Regulation and Investigation Section, 2917 International Lane, Suite 300, Madison, Wisconsin 53704.

**(4) ACTION BY THE DEPARTMENT.** (a) Upon receiving an application under sub. (3)(b) to list a person in the registry, the department shall review the application and make whatever inquiries are necessary to determine if the person is eligible to be included in the registry.

(b) Within 30 days after receiving an application, the department shall either approve the application and include the person in the registry or deny the application. If the application for inclusion is denied the department shall give the person, or the facility or agency that submitted the application on behalf of that person, reasons, in writing, for the denial.

**(5) RELEASE OF REGISTRY INFORMATION.** With the exception of sub. (2)(b), and to the extent permitted by state and federal law, the information included in the registry about individuals is public information. The department shall respond promptly to inquiries concerning registry information. A request for registry information shall be in writing and accompanied by a self-addressed stamped envelope.

(e) The subject of a court finding that the person has abandoned his or her child, or has inflicted physical abuse or neglect on the child.

(f) Had a child welfare agency, group home or shelter care facility license revoked or denied within the last 5 years.

(g) Violated any provision of this chapter or ch. 48, Stats., or fails to meet the minimum requirements of this chapter.

(h) Made false statements or withheld information.

**54.02(4)**

(4) FINANCING. (a) The board, with the executive, shall be responsible for the safety and judicious use of the funds of the agency. Policies and practices shall be in accord with sound budgeting, disbursement and audit control procedures.

(b) Each agency shall:

1. Have sufficient funds assured to carry a new agency through its first year of operation and be able to furnish evidence to that effect.

*The agency should have at least \$25,000 available for operating expenses for the first year of operation. This \$25,000 may be a line of credit, cash, or a loan.*

2. Have a sound plan of financing to assure sufficient funds to enable it to carry out its defined purposes and to provide proper care for children, as required by the administrative rules relating to licensing child-placing agencies.

3. Provide for annual audit of all accounts by a certified public accountant who is not in the employ of the agency nor a member of the board.

*The agency must provide the Department annually an audit prepared by a certified public accountant in accordance with accepted audit standards. The audit is to be sent to the licensing specialist or be available for review by the licensing specialist on site.*

4. On request, provide the department with financial records or financial statements.

(c) The financial operation of the agency shall be on the basis of an annual budget approved by the board. This budget shall reflect anticipated expenditures and sources of income.

**HFS 54.03 Personnel administration.**

(1) PERSONNEL POLICIES. Each agency shall have a written statement of personnel practices adopted by the board. The board shall review personnel practices at least every 2 years.

(a) The following items shall be included in personnel practices and shall be submitted to the department for approval with the original application:

1. Job specifications for all positions of 6 months or longer duration in the agency.

**54.03(1)(a)2.**

2. 'Staff pattern'. There shall be a staff sufficient in number and qualifications for the scope of the agency's services.

*Staffing patterns must take into consideration the geographical area served by the staff person and should address travel time, proximity of cases, etc.*

(b) There shall be written policy statements available to all employees and made known to each employee at the time of employment including:

1. The method of wage adjustments.
2. Retirement program.
3. Health and other insurance programs.
4. Vacation, sick leave, holidays and leaves of absence.
5. Probationary status.
6. Termination procedures.
7. Agency chain of command.
8. Grievance procedures.
9. Employment outside the agency.
10. For the specific job classification for which application is being made:
  - a. Compensation.
  - b. Hours of work.
  - c. Job specifications.
  - d. Performance evaluations.

(1m) PERSONNEL RECORD. A personnel record shall be maintained for each staff member and be available to authorized licensing staff. The record shall include:

(a) Employment application showing qualifications and experience.

(b) Statements from previous employers or personal references.

*This information may be received in writing or by telephone. If received by telephone, the name of the person making the contact, the person contacted, the date, and comments must be documented in writing.*

(c) Dates of employment.

**54.03(1m)(d)**

(d) Reports of job performance, if any.

(e) Medical reports, if pertinent.

(f) When the employee terminates employment, the dates and the reasons for separation.

(2) PERSONNEL. (a) General qualifications. 1. All employees shall have the ability and emotional stability to carry out their assigned duties.

2. Character references from at least 2 people and references from previous employers within the last 5 years must be obtained for prospective employees.

3. References may be documented either by letter or verifications in the record of verbal contact giving dates, person making the contact and persons contacted and the contact content.

4. The agency shall review and investigate application information carefully to determine whether employment of the individual is in the best interests of children under its care.

(b) Administrative staff. 1. An executive or administrator shall be employed who shall:

a. Possess a knowledge of child welfare services and a demonstrated actual or potential administrative skill and leadership.

b. Be a graduate of a college or university with a minimum of 15 graduate credits in the social sciences.

*An exception to the requirement of 15 graduate credits in the social sciences may be granted by the department if the person has a four-year degree and at least 2 years of supervised experience in the areas of adoption, foster care, or child protective services. This experience is in addition to the requirement of 2 years supervisory or administrative experience.*

c. Have at least 2 years experience in an administrative or supervisory capacity.

2. The executive's duties in administering the agency shall include:

a. Responsibility to the board for satisfactory management.

**54.03(2)(b)2.b.**

b. Keeping the board informed of the program of the agency.

c. Interpreting and implementing recognized standards of child welfare.

d. Preparing and presenting the annual budget for discussion and approval.

e. Responsibility for the operation of the program of child welfare in employment, supervision and discharge of staff.

3. If the executive also functions as casework supervisor he shall meet the additional requirements for that classification.

4. There shall be a qualified staff person to whom authority is delegated in the absence of the executive.

(c) Social service staff. 1. If a director of social services is employed, he shall have a master's degree from an accredited school of social work and a minimum of 2 years of post master's degree social work experience in a supervisory capacity supplemented by or including experience in family or child welfare.

2. A casework supervisor shall have a master's degree in social work, or its equivalent and have a minimum of 2 years of supervised experience in family or child welfare.

3. An advanced social worker shall meet one of the following:

a. A master's degree in social work, or

b. One year of graduate work in an accredited graduate school of social work or its equivalent and at least 2 years supervised experience in family or child welfare, or

*NOTE: An agency is not required to employ a person in the capacity of a director of social services. If the agency elects to employ a director of social services, s/he must meet the qualification in the rule.*

*The casework supervisor may have a master's degree in a field other than social work such as marriage and family therapy, clinical psychology, professional counseling, or guidance and counseling, with an emphasis on family and child issues. Other master's degrees may be considered if approved by the department.*

*Also see casework supervisor requirements related to foster care experience, treatment foster care, and adoption experience outlined in 54.04(1)(f)1, 38.09(1)(a), 38.09(1)(b), 38.09(2) and 54.04(1)(g)2.*



**54.03(2)(c)3.c.**

c. College graduation and at least 3 years of supervised experience in family and child welfare with 12 graduate credits in social work plus approved in-service training.

3m. At least 50% of the social worker staff shall be in the advanced social work category.

*The following will be considered as meeting the requirements of the "advanced social work" category (an exception must be submitted to the Regional Licensing Office):*

- *Licensure or certification as a social worker under Ch. 457 and at least 2 years of supervised experience in family or child welfare or*
- *A 4-year college degree in a social/behavioral science\*\*, at least 5 years supervised experience in family or child welfare and an approved in-service training plan*

*\*\*A social/behavioral science includes: social work, social welfare, sociology, psychology, criminology, social psychology or communications. Other majors may be considered if approved by the department.*

4. College graduates may be employed who do not have the foregoing training and experience. They shall have a minimum of 15 hours in the social sciences and within 2 years of employment have completed an approved in-service training program.

5. Persons who do not have qualifications for social worker but who have an interest in working with people may assist the social services staff. Employees in this classification shall have professional social worker supervision. They shall not assume the full responsibilities and duties normally assigned to a social worker.

(d) Consultant services. The agency shall provide consultant services as required to meet the needs of the children. Consultants shall meet the standards of their professional groups.

(e) Volunteers. If volunteers are used, the agency shall assign an appropriate staff member to evaluate and supervise them and to develop a plan for their orientation, training and use.

(3) STAFF DEVELOPMENT AND IN-SERVICE TRAINING. (a) The agency shall have within one year of original licensure, written material concerning the process and content of orientation, staff development and in-service training programs for agency employees.

(b) These programs shall include provision for the development of a working knowledge of these rules as they pertain to individual responsibilities of each employee.

**HFS 54.04 Social services.**

(1) GENERAL REQUIREMENTS. (a) The agency shall provide services to children who need and seek its care without discrimination on the basis of race, color, or national origin.

(b) Each agency shall:

1. Develop and follow written intake policies that include asking the referring person or agency to indicate if the child or at least one of the child's biological parents is of American Indian descent.

2. Secure and record information which substantiates the planning for the child.

3. Accept a child for placement only when legally authorized to do so.

4. Obtain from the parent or guardian of every child accepted for care a written authorization for emergency surgical care, for necessary vaccinations and immunizations, for routine medical examinations and treatment.

(c) The agency shall substantiate that continuing social services to the child, to his parents and to the foster parents on a planned basis are provided while the child is in placement.

(d) Adopt written policies for placement and discharge from service.

(e) When the agency is terminating its responsibility to the child release the child only to a person or agency authorized to accept the child.

**54.04(1)(f)**

(f) Requirements to be met by licensee in order to place children in boarding care. A child welfare agency with authority to place children in licensed foster homes and to license foster homes s. 48.61 (3) and (7), Stats.) shall:

1. Have a social service supervisory staff of one or more persons who meet the requirements of s. HFS 54.03(2)(c)2. and have at least one year's experience in the study of foster homes, licensing, placement and supervision of foster care.

2. License only homes which meet the foster home rules.

*"Boarding care" means foster care.*

*The requirement that the social service supervisor must have at least one year of experience in the study of foster homes, licensing, placement and supervision of foster care, may be met by exception through the following provisions.*

- *The CPA may meet the rule by contracting with a qualified person, who meets the requirements in HFS 54.04(1)(f)1. to consult with the social service supervisor. The licensee must submit a written plan to the department documenting the consultant's qualifications and how the supervision will be accomplished.*

- *The contracted qualified person must provide direct assistance to the supervisor in the areas of foster home studies, foster home licensing, foster home placement, case staffing, and foster home licensing reviews, monthly, for a period of 1 year before allowing the social service supervisor to work independently. The employee must also complete Foster Family Assessment Training or comparable training (such as provided by the Training Partnerships) within 1 year of hire date.*

*A licensee may not have a foster home license and a treatment foster home license at the same time. Other combinations of licensure may be acceptable with prior approval from the department such as HFS 56 foster care and family child care licenses.*

*The combination of HFS 38 treatment foster care and family child care will not be approved.*

*Foster homes and treatment foster homes may be licensed for up to 4 children. An HFS 56 foster home may be licensed for up to 6 children only to accommodate a sibling group. (This exception is not permissible in HFS 38 licensed treatment foster homes).*

**54.04(1)(f)2. continued**

*CPAs may grant exceptions to certain rules as specified in HFS 56 and HFS 38.*

*The CPA must show that the rule intent will still be met and ensure that the health, safety, and welfare of children in care will not be compromised by granting the exception.*

*Exceptions to certain other rules designated in HFS 38 and HFS 56 may only be granted via application (utilizing Form #CFS-847) and approval of the Department exceptions panel.*

*A foster home licensed by a CPA may appeal decisions made by the CPA regarding the foster home. This appeal process is described in s. 48.64(4). Appeals should be sent to: Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707.*

*The licensee agency must comply with all of HFS 12 before issuing a foster home license.*

3. Place children only in homes which meet the foster home rules.

4. Place and/or supervise a minimum of 5 children a year in foster care, exclusive of adoptive placement.

5. Assign the responsibility for supervision to one staff person when there are fewer than 20 children in foster care.

6. Place no child under the care of the agency in the home of a staff person employed by the agency or a member of the board of directors. This does not pertain to persons whose only employment by the agency is in the foster parent role.

7. Maintain individual foster home records for each home used by the agency which includes signed applications and agreements.

8. Establish an administrative plan for periodic review of children in boarding home placement.

*No licensing agency may issue a foster home license to one of its own employees within the same program area. A foster parent serving an agency only in the foster parent role and volunteers utilized by an agency are not considered employees for purposes of this prohibition.*

*The agency must comply with the requirements under s. 48.38 which requires the agency to prepare a written permanency plan for every child in guardianship of the agency and the plan must be reviewed as required under s. 48.38(5) every 6 months. A judicial review of the plan must occur after 12 months as required by s. 48.38(5m).*

**54.04(1)(g)**

(g) Requirements to be met by licensee in order to accept guardianship. A child welfare agency with authority to accept guardianship and place children for adoption under ss. 48.43(1), 48.61(5) and 48.70(4), Stats., shall:

1. Furnish evidence of providing a service to cover a geographic area with no less than a 50 mile radius or 200,000 population base.

2. Have a social service supervisory staff of one or more persons available, who, in addition to meeting the requirements of s. HFS 54.03(2)(c)2., have one year's experience in the study, placement, and postplacement services in an agency authorized to place children for adoption.

*An exception to the requirement of one year of experience in the study, placement, and post-placement service in an agency authorized to place children for adoption may be granted under the following provisions.*

- *The CPA may meet the rule by contracting with a qualified person, who meets the requirements in HFS 54.04(1)(g)2. to consult with the social service supervisor who lacks required experience. The licensee must submit a written plan to the department documenting the consultant's qualifications and how the supervision will be accomplished.*

- *The contracted qualified person must provide direct assistance to the social service supervisor in the areas of adoption studies, adoptive placement, and post-placement services to families and children, monthly, for a period of 1 year before the social service supervisor can work independently.*

*The supervisor must also complete the Adoptive Family Assessment Training or comparable training (such as provided by the Training Partnerships) within 1 year of his/her hire date.*

3. Place at least 15 children in adoption a year.

*An agency complying with the following steps will be considered to meet the requirements in the rule:*

- *Place at least 15 children for adoption in a year and assign to one worker no less than 5 placements a year; or*

*Place at least 5 children for any of the following kinds of adoption in a year and comply with the following requirements for adoption services:*

**54.04(1)(g)3. continued**

*a. For international adoptions under ss.48.839, 48.833, Wis. Stats., meeting sections (1) and (3) through (6) of the Adoption Agency Standards and Requirements or under s. 48.97, Sections (1), (3), (5) and (6) of the Adoption Agency Standards and Requirements.*

*b. For relative adoptions under s. 48.835(2), Wis. Stats., meeting sections (1) through (6) of the Adoption Agency Standards and Requirements.*

*c. For non-relative or as otherwise called “independent” adoptions under ss.48.837, Wis. Stats., or s. 48.833, Wis. Stats., meeting sections (1) through (6) of the Adoption Agency Standards and Requirements.*

*NOTE: Stepparent adoptions under s. 48.835(3)(b) do not count in the requirements for 5/15 placements a year.*

4. If fewer than 20 children are under supervision or placed within one year, assign this responsibility to one staff person.

5. Assign to one worker no less than 5 placements a year.

6. Accept applicants only from the geographical area covered by the license.

7. Develop and follow written intake policies for the acceptance of children and prospective adoptive families. Intake policies shall include asking the referring person or agency to indicate if the child or at least one of the child's biological parents is of American Indian descent.

8. Establish an administrative plan for a periodic review of children in the agency's guardianship.

*The agency must comply with the requirements under s. 48.38 that require the agency to prepare a written permanency plan for every child in guardianship of the agency. The plan must be reviewed as required under s. 48.38(5). A judicial review of the plan must occur after 12 months as required by s. 48.38(5m).*

9. When a child is determined ready for placement the child shall be placed within 3 months by the guardianship agency or referred to another agency or resource for placement.

**54.04(1)(g)10**

10. Provide postplacement services to the adoptive family for the purpose of effecting a successful integration of the child into the family.

*Post-placement services should be described in written policies. Visits should occur at least 3 times during a 6 month pre-adoptive period and should include a combination of in-home and office contacts. In the case of international and ICPC cases, visits shall be conducted in accordance with the requirements of the sending country or sending state.*

11. Maintain a record of the study of the adoptive home and of the placement and postplacement services.

12. Require workers to inform prospective adoptive parents interested in adopting a special needs child about the subsidized adoption program and that they may submit an application for an adoption subsidy.

*Generally, a child brought to Wisconsin for adoption from another country or from another state under the Interstate Compact on the Placement of Children may not be provided adoption assistance from the State of Wisconsin.*

13. Comply with ch. HFS 53 regarding adoption information search and disclosure to adoptees and disclosure of medical, genetic and non-identifying social history information to the courts, adoptees, adoptive parents or birth parents.

(2) PROGRAM OF CHILD CARE. (a) Education. The agency shall be responsible for providing opportunities for academic and vocational training.

*School-age residents shall be enrolled in school age soon as possible after admission to the foster home. The licensee shall ensure school attendance requirements under chs. 115 and 118, Wis. Stats, are met unless a resident is otherwise excused by school officials.*

(b) Health care. The agency shall:

1. See that each child has a thorough health appraisal and a rehabilitative health program as indicated.

2. Have on file the written authorization from parent or guardian as required in sub. (1) (b) 4.

3. Provide for consultation to staff in the areas of medical, dental, psychological and psychiatric need.

4. Obtain, when needed, psychiatric and psychological services including tests and examinations.

**54.04(2)(c)**

(c) Admission examination—health qualifications. Each child shall have a physical examination from a qualified physician within 90 days prior to the initial acceptance for placement. If the foregoing has not occurred, the examination shall be given within 48 hours after acceptance.

*Exams shall be arranged within 30 days of placement per HFS 46.09(4)(a).*

1. Prior to placement the child shall have been observed by a person competent to recognize common signs of communicable diseases.

2. It shall be determined that each child is adequately immunized against the following diseases:

- a. Diphtheria
- b. Polio
- c. Tetanus
- d. Whooping cough (if under 5 years)
- e. Measles (rubeola)
- f. German measles (rubella)
- g. Mumps

3. Each child shall have been given a tuberculin test, and chest X-ray if indicated, within 6 months prior to acceptance.

*A tuberculin test completed within 30 days after placement will also be accepted.*

4. All medical reports, i.e., physical examinations, tests and recommendations shall be in writing and filed with the agency.

(d) Medical examinations. Each agency shall provide for each child annually a health examination covering the areas included on a department prescribed form.

*HealthCheck forms  
<http://www.dhfs.state.wi.us/forms/index.htm> or an annual physical exam form signed by a physician, physician assistant or HealthCheck provider meets this requirement.*

**Note:** A health examination form may be obtained from the Department's website at <http://www.dhfs.wisconsin.gov> or by writing or telephoning any field office listed in Appendix A.

(e) Medical care. 1. Each agency shall have a plan and make provisions for prompt treatment in illnesses and for carrying out corrective measures and treatment of remedial defects or deformities.



**54.04(2)(e)2.**

2. Procedures for hospitalization shall be established.

(f) Dental care. 1. Each agency shall provide for regular dental examinations and treatment including necessary prophylaxis, repairs and extractions.

2. Each child over 3 shall have a thorough dental examination as soon as practical after acceptance for care and at intervals thereafter not exceeding 6 months after the last examination or completion of treatment.

(g) Eye care. Children who are in need of glasses shall have refractions at a minimum of once every 2 years and shall be supplied with glasses as required.

(h) Special care. Foster parents shall be informed of the expected precautions to be taken in the care of sick children and in the handling of medicines and prescriptions.

(i) Medical records. A health record shall be maintained for each child covering the following health history:

1. Pre-natal and birth history.
2. Developmental history.
3. Previous illness, injuries and surgery.
4. Immunizations and tests.
5. Social, emotional and environmental history of the child.
6. Height and weight record.
7. Health history of the child's family including mental, or emotional problems.

(j) Clothing. The agency shall furnish each child with clothing which is individually selected and fitted, appropriate to the season and comparable to that of other children in the community.

*Form CFS-872A Information for Foster Parents Part A and form CFS-872B Information for Foster Parents Part B may be used to meet the intent of this requirement.*

(k) The licensee shall be knowledgeable of and ensure that staff members and volunteers observe the patient rights and grievance resolution procedures in s. 51.61, Stats., and ch. HFS 94, for each resident that receives services for treatment of mental illness, a developmental disability, alcoholism or drug dependency. Residents that are not specifically identified as coming under s. 51.61, Stats., and ch. HFS 94 shall have rights and access to grievance resolution procedures that are comparable to those found in s. 51.61, Stats., and ch. HFS 94.

#### **HFS 54.05 Indian children.**

(1) DETERMINATION THAT A CHILD IS OR MAY BE AN INDIAN CHILD. If an agency has obtained information at intake or through other means that the child or at least one of the child's biological parents is or may be of American Indian descent, the child's case manager shall:

(a) Carry out and document in the child's case record diligent efforts, including but not limited to contacting the potential tribe or tribes' membership or enrollment offices and child welfare offices, and the U.S. department of interior's bureau of Indian affairs where contacts with individual tribes do not document the child's Indian descent, to verify that the child is an Indian child and to identify the child's Indian tribe;

(b) Inform the court of a determination that the child is an Indian child and of the factual basis for that determination and document and date in the child's case record that determination; and

(c) Comply with 25 USC 1912 (a).

(2) COMPLIANCE WITH INDIAN CHILD WELFARE ACT. If the agency determines under sub. (1) that a child is an Indian child, the agency shall comply with all provisions of the Indian Child Welfare Act, 25 USC 1901 to 1963, and s. 48.028, Stats.

(3) SERVICES FOR INDIAN CHILD AND FAMILY.

*The tribe(s) must be notified immediately upon the CPA learning of a child's possible Indian heritage. The tribe(s) can then help to determine whether the child is subject to the Indian Child Welfare Act. Early involvement with the tribe(s) will facilitate planning for the child's placement and help to avoid custody issues later.*

**54.05(3)(a)**

(a) Before providing services to an Indian child and the Indian child's family, the agency shall inform the child's tribe, if known, and ask for the tribe's participation in efforts to provide services to the Indian child and the Indian child's family. The child's case manager shall document and date in the child's case record agency efforts to inform the tribe and seek its participation.

(b) The Indian child's case manager shall undertake active efforts to prevent breakup of the child's family by providing remedial services and rehabilitative programs to the Indian child and the child's family in accordance with 25 USC 1912(d). The child's case manager shall document and date those efforts in the child's case record.

(4) **TERMINATION OF PARENTAL RIGHTS.** An agency seeking the termination of parental rights to an Indian child shall notify the parents and tribe in accordance with 25 USC 1912(a) of their rights of intervention and shall provide the court of jurisdiction with information on agency efforts described under sub. (3). The information shall include the reasons why those efforts proved unsuccessful. The agency shall record in the Indian child's case record the date the information was given to the court.

(5) **PLACEMENT OF AN INDIAN CHILD.** (a) Adoptive placement.

1. For the adoptive placement of an Indian child, 25 USC 1915(a) requires that preference be given, in the absence of good cause to the contrary, to placement with, in order of priority, a member of the Indian child's extended family, another member of the Indian child's tribe or another Indian family. The Indian child's case manager shall investigate the availability of a placement in the order of priority indicated.

2. After completing the adoption of the Indian child, the child's case manager shall request in writing that the court that ordered the adoption notify the secretary of the U.S. department of the interior of the following enrollment information:

**54.05(5)(a)2.a.**

a. The name and tribal affiliation of the Indian child;

b. The name and address of the adoptive parents; and

c. The name and address of any agency having files or information on the child's adoptive placement.

3. The Indian Child's case manager shall file a copy of the written request under subd.2. in the child's case record.

(b) Foster care or preadoptive placement.

1. For foster care or preadoptive placement of an Indian child, 25 USC 1915 (b) requires that the child be placed in the least restrictive setting which most approximates a family and in which any special needs of the child may be met, within reasonable proximity to the child's home. Preference is to be given, in the absence of good cause to the contrary, to placement, in order of priority:

a. With a member of the Indian child's extended family;

b. In a foster home licensed, approved or specified by the Indian child's tribe;

c. In an Indian foster home licensed by the department, a county social services or human services department or a child-placing agency; or

d. In an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

2. For foster care or preadoptive placement of an Indian child, except for an emergency placement under 25 USC 1922, the child's case manager shall investigate to determine the availability of a placement under subd. 1. in the order of priority indicated. The Indian child's case manager shall document in the child's case record the investigative efforts and results, as well as any emergency placement and the reason for it.

**54.05(5)(b)3.**

3. An agency seeking to place an Indian child in foster care shall notify the parents and tribe in accordance with 25 USC 1912 (a) of their right of intervention and shall provide the court of jurisdiction with information on agency efforts described under sub. (3). The information shall include the reasons why those efforts proved unsuccessful. The agency shall record in the Indian child's case record the date the information was given to the court.

(c) Preference of tribe, child or parent. In the case of a placement under par. (a) or (b), if the Indian child's tribe establishes a different order of preference by resolution, the agency shall follow that order so long as the placement is the least restrictive setting appropriate to the particular needs of the child as provided in par. (b). Where appropriate, the preference of the Indian child or the child's parent shall be considered provided that where a consenting parent evidences a desire for anonymity, the agency shall give weight to that desire in applying the preference.

(d) Informing the court. Prior to the court ordering termination of parental rights, foster care placement, adoptive placement or adoption of an Indian child, the agency shall inform the court in writing of agency investigative efforts and results to determine the availability of a placement in order of priority under par. (a) or (b) including when there is an emergency placement or when a different order of preference is expressed under par. (c).

(e) Record of placement. When an agency places an Indian child under par. (a) or (b), the agency shall forward a record of the placement to the department. The record shall provide evidence of efforts to comply with the order of preference under par. (a) 1. or (b) 1., as appropriate. The department, pursuant to 25 USC 1915 (e), shall maintain the record and shall make it available at any time upon request of the secretary of the U.S. department of the interior or of the Indian child's tribe.

*At this time, agencies are not required to forward a copy of the record of an Indian child's placement to the department.*

**54.05(5)(e)Note:**

Note: Send records of placement to the Bureau of Programs and Policies, Division of Children and Family Services, P.O. Box 7851, Madison, WI 53707.

(6) SANCTIONS FOR NOT COMPLYING WITH THE INDIAN CHILD WELFARE ACT. A child-placing agency which fails to follow the provisions of the Indian Child Welfare Act (ICWA), 25 USC 1901 to 1963, concerning child custody proceedings involving an Indian child shall be subject to the following department sanctions:

(a) If the child-placing agency knowingly and intentionally disregards a requirement of the ICWA, the department shall by letter of notification order the child-placing agency to stop accepting for service all Indian children referred for service to the agency. The agency shall ensure that no child accepted for service is an Indian child;

(b) If the child-placing agency knowingly and intentionally disregards the department's letter of notification under par. (a), the department shall revoke or not renew, as appropriate, the child-placing agency's license;

(c) If the child-placing agency is informed or discovers that it has unknowingly or negligently violated a requirement of the ICWA, the child-placing agency shall do the following:

1. Notify the court and the department upon being informed of or discovery of the violation of the ICWA;

2. Notify the parent Indian custodian, tribe and child upon being informed of or discovery of the violation of the ICWA; and

3. Cooperate with all parties in promptly correcting any inappropriate placements; and

(d) If the child-placing agency under par. (c) does not comply with par. (c) 1. to 3., the child-placing agency shall be subject to the sanctions under pars. (a) and (b).

**54.06****HFS 54.06 Records and reports.**

(1) GENERAL REQUIREMENTS. Each agency shall maintain records and submit reports prescribed by the department. Authorized representatives of the department shall have access to all records pertinent to licensing and to specific adoption searches and disclosure of the adoption search information.

*Agencies must keep hard copies of closed adoption records or the records may be stored on microfiche. The statutes require records to be permanent and microfiche is the only acceptable method other than hard copies. Electronic storage of these records is not acceptable.*

*Agencies may contract with the state for storage of closed adoption records. These records are sent to the Department of Health and Family Services Adoption Search Program. Arrangements must be made with that agency before sending records.*

(2) RECORDS. (a) Each agency shall maintain:

1. A permanent register with identifying information of all children accepted for service or placement.

*Records of children who are adopted must be retained permanently. Records of children not adopted must be maintained for at least 7 years or until the child reaches his/her 21st birthday.*

2. Individual case records for each child served and his family.

a. These records shall contain vital statistics information for the child, his parents and siblings, source of referral, date of acceptance and terms.

b. The original social study and investigation.

c. Legal documents pertinent to legal custody and guardianship such as birth records and court reports.

d. Written agreements with parents, guardians or legal custodians. (The consent and authorization for necessary medical or surgical care may be kept separate in the health record.)

e. School reports.

f. Recording of progress of casework and/or treatment plan with child and family.

3. Individual foster home records for each foster home used by the agency which include signed applications and agreements.

**54.06(2)(a)4.**

4. Individual records of studied adoptive applicants.

5. Personnel records.

6. Financial reports and audits.

(b) All records shall be kept in a safe place protected from fire damage, theft and unauthorized scrutiny.

(c) All adoption records shall be maintained in a separate file and in a manner that ensures confidentiality.

*Exceptions to confidentiality requirements are defined in state statutes and relate to the release of an adopted child's medical information to the adoptive parents; release of certain medical and genetic information and social history information to the adoptive parents or the adoptee; using the child's picture in the media for adoptive placement recruitment; and the adoption search program's disclosure of birth family information to adoptees and other related persons under certain circumstances. Adoption information in other situations may only be disclosed by written consent or by court order*

1. The agency shall establish written procedures governing access to the files.

2. The agency shall establish written procedures which ensure that information is released only in accordance with ss. 48.432, 48.433 and 48.93, Stats., and ch. HFS 53.

(3) REPORTS. (a) Each agency shall submit statistical reports as required by the department under s. 48.66 (3), Stats.

(b) Each agency shall make a report to the department within 48 hours after the occurrence of an unusual incident such as a major fire which is defined as one which requires the services of a fire department, or the death or serious injury of a child, a serious injury being defined as one which requires the hospitalization of the child.



**APPENDIX A**  
**REGIONAL OFFICES OF THE DIVISION OF CHILDREN AND FAMILY SERVICES**

The Department of Health and Family Services licenses child care centers through five Division of Children and Family Services regional offices. Below are addresses and phone numbers of the regional offices and related counties.

**Northeastern Office**

(Green Bay)  
200 North Jefferson  
Suite 411  
Green Bay, WI 54301-5100  
(920) 448-5312

Brown, Calumet, Door, Fond du Lac, Green  
Lake, Kewaunee, Manitowoc, Marinette,  
Marquette, Menominee, Oconto, Outagamie,  
Ozaukee, Shawano, Sheboygan, Washington,  
Waupaca, Waushara, Winnebago,

**Northern Office**

(Rhineland)  
2187 North Stevens Street  
P.O. Box 697  
Rhineland, WI 54501-0697  
(715) 365-2500

Ashland, Bayfield, Florence, Forest, Iron,  
Langlade, Lincoln, Marathon, Oneida,  
Portage, Price, Sawyer, Taylor, Vilas, Wood

**Southeastern Office**

(Waukesha)  
141 N.W. Barstow Street, Room 104  
Waukesha, WI 53188-3756  
(262) 521-5100

Kenosha, Milwaukee, Racine, Waukesha

**Southern Office**

(Madison)  
2917 International Lane, Suite 110  
Madison, WI 53704-3172  
(608) 243-2400

Adams, Columbia, Crawford, Dane, Dodge,  
Grant, Green, Iowa, Jefferson, Juneau,  
Lafayette, Richland, Rock, Sauk, Walworth

**Western Office**

(Eau Claire)  
610 Gibson Street Suite 2,  
Eau Claire, WI 54701-2626  
(715) 836-2185

Barron, Buffalo, Burnett, Chippewa, Clark,  
Douglas, Dunn, Eau Claire, Jackson,  
LaCrosse, Monroe, Pepin, Pierce, Polk, Rusk,  
St. Croix, Trempealeau, Vernon, Washburn

## APPENDIX B

## KEY STATUTES RELATED TO LICENSING CHILD PLACING AGENCIES

This appendix is based upon the unofficial text from 2003-04 Wisconsin Statutes & Annotations as updated through January 15, 2006, and 2005 Wisconsin Act 105. Only pertinent portions of the statutes are included here and were obtained at <http://www.legis.state.wi.us/rsb/Statutes.html>. Action by the legislature may result in changes to these statutes. Only printed volumes are Official Text under s. 35.18(2), Wis. Stats.

**48.02 DEFINITIONS.**

(12) "Legal custody" means a legal status created by the order of a court, which confers the right and duty to protect, train and discipline the child, and to provide food, shelter, legal services, education and ordinary medical and dental care, subject to the rights, duties and responsibilities of the guardian of the child and subject to any residual parental rights and responsibilities and the provisions of any court order.

**48.028 CUSTODY OF INDIAN CHILDREN.** The Indian child welfare act, 25 USC 1911 to 1963, supersedes the provisions of this chapter in any child custody proceeding governed by that act.

**48.205 CRITERIA FOR HOLDING A CHILD OR EXPECTANT MOTHER IN PHYSICAL CUSTODY.**

(1) A child may be held under s. 48.207(1), 48.208 or 48.209 if the intake worker determines that there is probable cause to believe the child is within the jurisdiction of the court and:

(a) Probable cause exists to believe that if the child is not held he or she will cause injury to himself or herself or be subject to injury by others.

(am) Probable cause exists to believe that if the child is not held he or she will be subject to injury by others, based on a determination under par. (a) or a finding under s. 48.21(4) that if another child in the home is not held that child will be subject to injury by others.

(b) Probable cause exists to believe that the parent, guardian or legal custodian of the child or other responsible adult is neglecting, refusing, unable or unavailable to provide adequate supervision and care and that services to ensure the child's safety and well-being are not available or would be inadequate.

(bm) Probable cause exists to believe that the child meets the criteria specified in par. (b), based on a determination under par. (b) or a finding under s. 48.21(4) that another child in the home meets those criteria.

(c) Probable cause exists to believe that the child will run away or be taken away so as to be unavailable for proceedings of the court or its officers.

(d) Probable cause exists to believe that the child is an expectant mother, that if the child expectant mother is not held, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the child expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, and that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her.

(1m) An adult expectant mother of an unborn child may be held under s. 48.207(1m) if the intake worker determines that there is probable cause to believe that the adult expectant mother is within the jurisdiction of the court, to believe that if the adult expectant mother is not held, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the adult expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, and to believe that the adult expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her.

(2) The criteria for holding a child or the expectant mother of an unborn child in custody specified in this section shall govern the decision of all persons responsible for determining whether the action is appropriate.

**48.207 PLACES WHERE A CHILD OR EXPECTANT MOTHER MAY BE HELD IN NONSECURE CUSTODY.**

(1) A child held in physical custody under s. 48.205(1) may be held in any of the following places:

(a) The home of a parent or guardian, except that a child may not be held in the home of a parent or guardian if the parent or guardian has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. The person making the custody decision shall consider the wishes of the child in making that determination.

(b) The home of a relative, except that a child may not be held in the home of a relative if the relative has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. The person making the custody decision shall consider the wishes of the child in making that determination.

(c) A licensed foster home or a licensed treatment foster home provided the placement does not violate the conditions of the license.

(cm) A licensed group home provided that the placement does not violate the conditions of the license.

(d) A nonsecure facility operated by a licensed child welfare agency.

(e) A licensed private or public shelter care facility.

(f) The home of a person not a relative, if the placement does not exceed 30 days, though the placement may be extended for an additional 30 days for cause by the court, and if the person has not had a foster home or treatment foster home license refused, revoked or suspended within the last 2 years.

(g) A hospital as defined in s. 50.33(2)(a) and (c) or physician's office if the child is held under s. 48.20(4) or (4m).

(h) A place listed in s. 51.15(2) if the child is held under s. 48.20(5).

(i) An approved public treatment facility for emergency treatment if the child is held under s. 48.20(6).

(k) A facility under s. 48.58.

(1m) An adult expectant mother of an unborn child held in physical custody under s. 48.205 (1m) may be held in any of the following places:

(a) The home of an adult relative or friend of the adult expectant mother.

(b) A licensed community-based residential facility, as defined in s. 50.01(1g), if the placement does not violate the conditions of the license.

(c) A hospital, as defined in s. 50.33(2)(a) and (c), or a physician's office if the adult expectant mother is held under s. 48.203(3).

(d) A place listed in s. 51.15(2) if the adult expectant mother is held under s. 48.203(4).

(e) An approved public treatment facility for emergency treatment if the adult expectant mother is held under s. 48.203(5).

(2)(a) If a facility listed in sub. (1)(b) to (k) is used to hold a child in custody, or if supervisory services of a home detention program are provided to a child held under sub. (1)(a), the authorized rate of the facility for the care of the child or the authorized rate for those supervisory services shall be paid by

## APPENDIX B

the county in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more. If no authorized rate has been established, a reasonable sum to be fixed by the court shall be paid by the county in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more for the supervision or care of the child.

(b) If a facility listed in sub. (1m)(b) to (e) is used to hold an expectant mother of an unborn child in custody, or if supervisory services of a home detention program are provided to an expectant mother held under sub. (1m)(a), the authorized rate of the facility for the care of the expectant mother or the authorized rate for those supervisory services shall be paid by the county in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more. If no authorized rate has been established, a reasonable sum to be fixed by the court shall be paid by the county in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more for the supervision or care of the expectant mother.

(3) A child taken into custody under s. 48.981 may be held in a hospital, foster home, treatment foster home, relative's home or other appropriate medical or child welfare facility which is not used primarily for the detention of delinquent children.

**48.235 GUARDIAN AD LITEM.**

(1) Appointment. (a) The court may appoint a guardian ad litem in any appropriate matter under this chapter.

(b) The court shall appoint a guardian ad litem for a minor parent petitioning for the voluntary termination of parental rights.

(c) The court shall appoint a guardian ad litem for any child who is the subject of a proceeding to terminate parental rights, whether voluntary or involuntary, for a child who is the subject of a contested adoption proceeding and for a child who is the subject of a proceeding under s. 48.977 or 48.978.

(d) The circuit court may appoint a guardian ad litem for a minor in a proceeding under s. 48.375(7) to aid the circuit court in determining under s. 48.375(7)(c) whether or not the minor is mature and well-informed enough to make the abortion decision on her own and whether or not the performance or inducement of the abortion is in the minor's best interests.

(e) The court shall appoint a guardian ad litem, or extend the appointment of a guardian ad litem previously appointed under par. (a), for any child alleged or found to be in need of protection or services, if the court has ordered, or if a request or recommendation has been made that the court order, the child to be placed out of his or her home under s. 48.345 or 48.357.

(f) The court shall appoint a guardian ad litem, or extend the appointment of a guardian ad litem previously appointed under par. (a), for any unborn child alleged or found to be in need of protection or services.

**48.345 DISPOSITION OF CHILD OR UNBORN CHILD OF CHILD EXPECTANT MOTHER ADJUDGED IN NEED OF PROTECTION OR SERVICES.**

If the judge finds that the child is in need of protection or services or that the unborn child of a child expectant mother is in need of protection or services, the judge shall enter an order deciding one or more of the dispositions of the case as provided in this section under a care and treatment plan, except that the order may not place any child not specifically found under chs. 46, 49, 51, 115 and 880 to be developmentally disabled, mentally ill or to have a disability specified in s. 115.76(5) in facilities which exclusively treat those categories of children and the court may not place any child expectant mother of an unborn child in need of protection or services outside of the child expectant mother's home unless the court finds that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her. The dispositions under this section are as follows:

(1) Counsel the child or the parent, guardian or legal custodian.

(2) Place the child under supervision of an agency, the department, if the department approves, or a suitable adult, including a friend of the child, under conditions prescribed by the judge including reasonable rules for the child's conduct, designed for the physical, mental and moral well-being and behavior of the child

and, if applicable, for the physical well-being of the child's unborn child.

(2m) Place the child in the child's home under the supervision of an agency or the department, if the department approves, and order the agency or department to provide specified services to the child and the child's family, which may include but are not limited to individual, family or, group counseling, homemaker or parent aide services, respite care, housing assistance, day care parent skills training or prenatal development training or education.

(2r) Place the child as provided in sub. (2) or (2m) and, in addition, request a court-appointed special advocate program to designate a court-appointed special advocate for the child to perform the activities specified in s. 48.236(3) that are authorized in the memorandum of understanding under s. 48.07(5)(a). A court-appointed special advocate designated under this subsection shall have the authority specified in s. 48.236(4) that is authorized in the memorandum of understanding under s. 48.07(5)(a).

(3) Designate one of the following as the placement for the child:

(a) The home of a parent or other relative of the child, except that the judge may not designate the home of a parent or other relative of the child as the child's placement if the parent or other relative has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, unless the judge determines by clear and convincing evidence that the placement would be in the best interests of the child. The judge shall consider the wishes of the child in making that determination.

(b) The home of a person who is not required to be licensed if placement is for less than 30 days, except that the judge may not designate the home of a person who is not required to be licensed as the child's placement if the person has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, unless the judge determines by clear and convincing evidence that the placement would be in the best interests of the child. The judge shall consider the wishes of the child in making that determination.

(c) A foster home or treatment foster home licensed under s. 48.62, a group home licensed under s. 48.625, or in the home of a guardian under s. 48.977(2).

(cm) A group home described in s. 48.625 (1m) if the child is at least 12 years of age, is a custodial parent, as defined in s. 49.141(1)(b), or an expectant mother, is receiving inadequate care, and is in need of a safe and structured living arrangement.

(d) A residential treatment center operated by a child welfare agency licensed under s. 48.60.

(4) If it is shown that the rehabilitation or the treatment and care of the child cannot be accomplished by means of voluntary consent of the parent or guardian, transfer legal custody to any of the following:

(a) A relative of the child.

(b) The county department in a county having a population of less than 500,000.

(bm) The department in a county having a population of 500,000 or more.

(c) A licensed child welfare agency.

(6)(a) If the child is in need of special treatment or care, as identified in an evaluation under s. 48.295 and the report under s. 48.33, the judge may order the child's parent to provide the special treatment or care. If the parent fails or is financially unable to provide the special treatment or care, the judge may order an appropriate agency to provide the special treatment or care whether or not legal custody has been taken from the parents. If a judge orders a county department under s. 51.42 or 51.437 to provide special treatment or care under this paragraph, the provision of that special treatment or care shall be subject to conditions specified in ch. 51. An order of special

treatment or care under this paragraph may not include an order for the administration of psychotropic drugs.

(b) Payment for the special treatment or care that relates to alcohol and other drug abuse services ordered under par. (a) shall be in accordance with s. 48.361.

(c) Payment for services provided under ch. 51 that are ordered under par. (a), other than alcohol and other drug abuse services, shall be in accordance with s. 48.362.

**(6m)** If the report prepared under s. 48.33(1) recommends that the child is in need of an integrated service plan and if an integrated service program under s. 46.56 has been established in the county, the judge may order that an integrated service plan be developed and implemented.

**(10)** Supervised Independent Living. (a) The judge may order that a child, on attaining 17 years of age, be allowed to live independently, either alone or with friends, under such supervision as the judge deems appropriate.

(b) If the plan for independent living cannot be accomplished with the consent of the parent or guardian, the judge may transfer custody of the child as provided in sub. (4)(a) to (c).

(c) The judge may order independent living as a dispositional alternative only upon a showing that the child is of sufficient maturity and judgment to live independently and only upon proof of a reasonable plan for supervision by an appropriate person or agency.

**(12)** Education Program. (a) Except as provided in par. (d), the judge may order the child to attend any of the following:

1. A nonresidential educational program, including a program for children at risk under s. 118.153, provided by the school district in which the child resides.

2. Pursuant to a contractual agreement with the school district in which the child resides, a nonresidential educational program provided by a licensed child welfare agency.

3. Pursuant to a contractual agreement with the school district in which the child resides, an educational program provided by a private, nonprofit, nonsectarian agency that is located in the school district in which the child resides and that complies with 42 USC 2000d.

4. Pursuant to a contractual agreement with the school district in which the child resides, an educational program provided by a technical college district located in the school district in which the child resides.

(b) The judge shall order the school board to disclose the child's pupil records, as defined under s. 118.125(1)(d), to the county department, department, in a county having a population of 500,000 or more, or licensed child welfare agency responsible for supervising the child, as necessary to determine the child's compliance with the order under par. (a).

(c) The judge shall order the county department, department, in a county having a population of 500,000 or more, or licensed child welfare agency responsible for supervising the child to disclose to the school board, technical college district board or private, nonprofit, nonsectarian agency which is providing an educational program under par. (a) 3. records or information about the child, as necessary to assure the provision of appropriate educational services under par. (a).

(d) This subsection does not apply to a child with a disability, as defined under s. 115.76(5).

**(13)** Alcohol or Drug Treatment or Education. (a) If the report prepared under s. 48.33(1) recommends that the child is in need of treatment for the use or abuse of alcohol beverages, controlled substances or controlled substance analogs and its medical, personal, family or social effects, the court may order the child to enter an outpatient alcohol and other drug abuse treatment program at an approved treatment facility. The approved treatment facility shall, under the terms of a service agreement between the approved treatment facility and the county in a county having a population of less than 500,000 or the department in a county having a population of 500,000 or more, or with the written informed consent of the child or the child's parent if the child has not attained the age of 12, report to the agency primarily responsible for providing services to the child as to whether the child is cooperating with the treatment and whether the treatment appears to be effective.

(b) If the report prepared under s. 48.33(1) recommends that the child is in need of education relating to the use of alcohol beverages, controlled substances or controlled substance analogs,

the court may order the child to participate in an alcohol or other drug abuse education program approved by the court. The person or agency that provides the education program shall, under the terms of a service agreement between the education program and the county in a county having a population of less than 500,000 or the department in a county having a population of 500,000 or more, or with the written informed consent of the child or the child's parent if the child has not attained the age of 12, report to the agency primarily responsible for providing services to the child about the child's attendance at the program.

(c) Payment for the court ordered treatment or education under this subsection in counties that have an alcohol and other drug abuse program under s. 48.547 shall be in accordance with s. 48.361.

**(14)(a)** If, based on an evaluation under s. 48.295 and the report under s. 48.33, the judge finds that the child expectant mother of an unborn child in need of protection or services is in need of inpatient treatment for her habitual lack of self-control in the use of alcohol, controlled substances or controlled substance analogs, exhibited to a severe degree, that inpatient treatment is appropriate for the child expectant mother's needs and that inpatient treatment is the least restrictive treatment consistent with the child expectant mother's needs, the judge may order the child expectant mother to enter an inpatient alcohol or other drug abuse treatment program at an inpatient facility, as defined in s. 51.01(10). The inpatient facility shall, under the terms of a service agreement between the inpatient facility and the county in a county having a population of less than 500,000 or the department in a county having a population of 500,000 or more, or with the written and informed consent of the child expectant mother or the child expectant mother's parent if the child expectant mother has not attained the age of 12, report to the agency primarily responsible for providing services to the child expectant mother as to whether the child expectant mother is cooperating with the treatment and whether the treatment appears to be effective.

(b) Payment for any treatment ordered under par. (a) shall be in accordance with s. 48.361.

**(15)** If it appears that an unborn child in need of protection or services may be born during the period of the dispositional order, the judge may order that the child, when born, be provided with any services or care that may be ordered for a child in need of protection or services under this section.

#### 48.355 DISPOSITIONAL ORDERS.

**(1)** Intent. In any order under s. 48.345 or 48.347 the judge shall decide on a placement and treatment finding based on evidence submitted to the judge. The disposition shall employ those means necessary to maintain and protect the well-being of the child or unborn child which are the least restrictive of the rights of the parent and child, of the rights of the parent and child expectant mother or of the rights of the adult expectant mother, and which assure the care, treatment or rehabilitation of the child and the family, of the child expectant mother, the unborn child and the family or of the adult expectant mother and the unborn child, consistent with the protection of the public. When appropriate, and, in cases of child abuse or neglect or unborn child abuse, when it is consistent with the best interest of the child or unborn child in terms of physical safety and physical health, the family unit shall be preserved and there shall be a policy of transferring custody of a child from the parent or of placing an expectant mother outside of her home only when there is no less drastic alternative. If there is no less drastic alternative for a child than transferring custody from the parent, the judge shall consider transferring custody to a relative whenever possible.

**(2)** Content of Order; Copy to Parent.

(b) The court order shall be in writing and shall contain:

4. If the child is placed outside the child's home, a designation of the amount of support, if any, to be paid by the child's parent, guardian or trustee, specifying that the support obligation begins on the date of the placement, or a referral to the county child support agency under s. 59.53(5) for establishment of child support.

7. A statement of the conditions with which the child or expectant mother is required to comply.

(4) Termination of Orders. Except as provided under s. 48.368, an order under this section or s. 48.357 or 48.365 made before the child reaches 18 years of age that places or continues the placement of the child in his or her home shall terminate at the end of one year after its entry unless the judge specifies a shorter period of time or the judge terminates the order sooner. Except as provided under s. 48.368, an order under this section or s. 48.357 or 48.365 made before the child reaches 18 years of age that places or continues the placement of the child in a foster home, treatment foster home, group home, or residential care center for children and youth or in the home of a relative other than a parent shall terminate when the child reaches 18 years of age, at the end of one year after its entry, or, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching 19 years of age, when the child reaches 19 years of age, whichever is later, unless the judge specifies a shorter period of time or the judge terminates the order sooner. An order under this section or s. 48.357 or 48.365 relating to an unborn child in need of protection or services that is made before the unborn child is born shall terminate at the end of one year after its entry unless the judge specifies a shorter period of time or the judge terminates the order sooner.

#### **48.357 CHANGE IN PLACEMENT.**

(1) (a) The person or agency primarily responsible for implementing the dispositional order, the district attorney, or the corporation counsel may request a change in the placement of the child or expectant mother, whether or not the change requested is authorized in the dispositional order,, as provided in par. (am) or (c), whichever is applicable.

(am)1. If the proposed change in placement involves any change in placement other than a change in placement specified in par. (c), the person or agency primarily responsible for implementing the dispositional order, the district attorney, or the corporation counsel shall cause written notice of the proposed change in placement to be sent to the child, the parent, guardian, and legal custodian of the child, any foster parent, treatment foster parent, or other physical custodian described in s. 48.62(2) of the child, the child's court-appointed special advocate, and, if the child is the expectant mother of an unborn child under s. 48.133, the unborn child by the unborn child's guardian ad litem. If the expectant mother is an adult, written notice shall be sent to the adult expectant mother and the unborn child by the unborn child's guardian ad litem. The notice shall contain the name and address of the new placement, the reasons for the change in placement, a statement describing why the new placement is preferable to the present placement, and a statement of how the new placement satisfies objectives of the treatment plan ordered by the court.

2. Any person receiving the notice under subd. 1. or notice of a specific placement under s. 48.355 (2)(b)2., other than a court-appointed special advocate, may obtain a hearing on the matter by filing an objection with the court within 10 days after receipt of the notice. Placements may not be changed until 10 days after that notice is sent to the court unless the parent, guardian, or legal custodian and the child, if 12 years of age or over, or the child expectant mother, if 12 years of age or over, her parent, guardian, or legal custodian and the unborn child by the unborn child's guardian ad litem, or the adult expectant mother and the unborn child by the unborn child's guardian ad litem, sign written waivers of objection, except that changes in placement that were authorized in the dispositional order may be made immediately if notice is given as required under subd. 1. In addition, a hearing is not required for placement changes authorized in the dispositional order except when an objection filed by a person who received notice alleges that new information is available that affects the advisability of the court's dispositional order.

3. If the court changes the child's placement from a placement outside the home to another placement outside the home, the change in placement order shall contain one of the statements specified in sub. (2v)(a)2.

(c)1. If the proposed change in placement would change the placement of a child placed in the home to a placement outside the home, the person or agency primarily responsible for implementing

the dispositional order, the district attorney, or the corporation counsel shall submit a request for the change in placement to the court. The request shall contain the name and address of the new placement, the reasons for the change in placement, a statement describing why the new placement is preferable to the present placement, and a statement of how the new placement satisfies objectives of the treatment plan ordered by the court. The request shall also contain specific information showing that continued placement of the child in his or her home would be contrary to the welfare of the child and, unless any of the circumstances specified in s. 48.355(2d)(b)1. to 5. applies, specific information showing that the agency primarily responsible for implementing the dispositional order has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns.

2. The court shall hold a hearing prior to ordering any change in placement requested under subd. 1. Not less than 3 days prior to the hearing, the court shall provide notice of the hearing, together with a copy of the request for the change in placement, to the child, the parent, guardian, and legal custodian of the child, the child's court-appointed special advocate, and all parties that are bound by the dispositional order. If all parties consent, the court may proceed immediately with the hearing.

3. If the court changes the child's placement from a placement in the child's home to a placement outside the child's home, the change in placement order shall contain the findings specified in sub. (2v)(a)1., one of the statements specified in sub. (2v)(a)2., and, if in addition the court finds that any of the circumstances specified in s. 48.355(2d)(b)1. to 5. applies with respect to a parent, the determination specified in sub. (2v)(a)3.

(6) No change in placement may extend the expiration date of the original order, except that if the change in placement is from a placement in the child's home to a placement outside the home the court may extend the expiration date of the original order to the date on which the child reaches 18 years of age, to the date that is one year after the date of the change in placement order, or, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching 19 years of age, to the date on which the child reaches 19 years of age, whichever is later, or for a shorter period of time as specified by the court. If the change in placement is from a placement outside the home to a placement in the child's home and if the expiration date of the original order is more than one year after the date of the change in placement order, the court shall shorten the expiration date of the original order to the date that is one year after the date of the change in placement order or to an earlier date as specified by the court.

#### **48.38 PERMANENCY PLANNING.**

(1) Definitions. In this section:

(a) "Agency" means the department, a county department or a licensed child welfare agency.

(am) "Independent agency" means a private, nonprofit organization, but does not include a licensed child welfare agency that is authorized to prepare permanency plans or that is assigned the primary responsibility of providing services under a permanency plan.

(b) "Permanency plan" means a plan designed to ensure that a child is reunified with his or her family whenever appropriate, or that the child quickly attains a placement or home providing long-term stability.

(2) Permanency Plan Required. Except as provided in sub. (3), for each child living in a foster home, treatment foster home, group home, residential care center for children and youth, secure detention facility, or shelter care facility, the agency that placed the child or arranged the placement or the agency assigned primary responsibility for providing services to the child under s. 48.355 shall prepare a written permanency plan, if any of the following conditions exists, and, for each child living in the home of a relative other than a parent, that

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agency shall prepare a written permanency plan, if any of the conditions specified in pars. (a) to (e) exists:

(a) The child is being held in physical custody under s. 48.207, 48.208 or 48.209.

(b) The child is in the legal custody of the agency.

(c) The child is under the supervision of an agency under s. 48.64(2), under a consent decree under s. 48.32(1)(b), or under a court order under s. 48.355.

(d) The child was placed under a voluntary agreement between the agency and the child's parent under s. 48.63(1) or (5)(b).

(e) The child is under the guardianship of the agency.

(f) The child's care would be paid for under s. 49.19 but for s. 49.19(20).

(g) The child's parent is placed in a foster home, treatment foster home, group home, residential care center for children and youth, secure detention facility, or shelter care facility and the child is residing with that parent.

(3) Time. Subject to s. 48.355(2d)(c)1., the agency shall file the permanency plan with the court within 60 days after the date on which the child was first removed from his or her home, except that if the child is held for less than 60 days in a secure detention facility, juvenile portion of a county jail, or a shelter care facility, no permanency plan is required if the child is returned to his or her home within that period.

(4) Contents of Plan. The permanency plan shall include all of the following:

(ag) The name, address, and telephone number of the child's parent, guardian, and legal custodian.

(am) The date on which the child was removed from his or her home and the date on which the child was placed in out-of-home care.

(ar) A description of the services offered and any services provided in an effort to prevent the removal of the child from his or her home, while assuring that the health and safety of the child are the paramount concerns, and to achieve the goal of the permanency plan, except that the permanency plan is not required to include a description of the services offered or provided with respect to a parent of the child to prevent the removal of the child from the home or to achieve the permanency plan goal of returning the child safely to his or her home if any of the circumstances specified in s. 48.355(2d)(b)1. to 5. applies to that parent.

(b) The basis for the decision to hold the child in custody or to place the child outside of his or her home.

(bm) A statement as to the availability of a safe and appropriate placement with a fit and willing relative of the child and, if a decision is made not to place the child with an available relative, a statement as to why placement with the relative is not safe or appropriate.

(c) The location and type of facility in which the child is currently held or placed, and the location and type of facility in which the child will be placed.

(d) If the child is living more than 60 miles from his or her home, documentation that placement within 60 miles of the child's home is either unavailable or inappropriate or documentation that placement more than 60 miles from the child's home is in the child's best interests. The placement of a child in a licensed foster home or a licensed treatment foster home more than 60 miles from the child's home is presumed to be in the best interests of the child if documentation is provided which shows all of the following:

1. That the placement is made pursuant to a voluntary agreement under s. 48.63(1).

2. That the voluntary agreement provides that the child may be placed more than 60 miles from the child's home.

3. That the placement is made to facilitate the anticipated adoptive placement of the child under s. 48.833 or 48.837.

(dg) Information about the child's education, including all of the following:

1. The name and address of the school in which the child is or was most recently enrolled.

2. Any special education programs in which the child is or was previously enrolled.

3. The grade level in which the child is or was most recently enrolled and all information that is available concerning the child's grade level performance.

4. A summary of all available education records relating to the child that are relevant to any education goals included in the education services plan prepared under s. 48.33(1)(e).

(dm) If as a result of the placement the child has been or will be transferred from the school in which the child is or most recently was enrolled, documentation that a placement that would maintain the child in that school is either unavailable or inappropriate or that a placement that would result in the child's transfer to another school would be in the child's best interests.

(dr) Medical information relating to the child, including all of the following:

1. The names and addresses of the child's physician, dentist, and any other health care provider that is or was previously providing health care services to the child.

2. The child's immunization record, including the name and date of each immunization administered to the child.

3. Any known medical condition for which the child is receiving medical care or treatment and any known serious medical condition for which the child has previously received medical care or treatment.

4. The name, purpose, and dosage of any medication that is being administered to the child and the name of any medication that causes the child to suffer an allergic or other negative reaction.

(e) A plan for ensuring the safety and appropriateness of the placement and a description of the services provided to meet the needs of the child and family, including a discussion of services that have been investigated and considered and are not available or likely to become available within a reasonable time to meet the needs of the child or, if available, why such services are not safe or appropriate.

(f) A description of the services that will be provided to the child, the child's family, and the child's foster parent, the child's treatment foster parent, the operator of the facility where the child is living, or the relative with whom the child is living to carry out the dispositional order, including services planned to accomplish all of the following:

1. Ensure proper care and treatment of the child and promote safety and stability in the placement.

2. Meet the child's physical, emotional, social, educational and vocational needs.

3. Improve the conditions of the parents' home to facilitate the safe return of the child to his or her home, or, if appropriate, obtain an alternative permanent placement for the child.

(fg) The goal of the permanency plan or, if the agency is making concurrent reasonable efforts under s. 48.355(2b), the goals of the permanency plan. If a goal of the permanency plan is any goal other than return of the child to his or her home, the permanency plan shall include the rationale for deciding on that goal. If a goal of the permanency plan is an alternative permanent placement under subd. 5., the permanency plan shall document a compelling reason why it would not be in the best interest of the child to pursue a goal specified in subds. 1. to 4. The agency shall determine one or more of the following goals to be the goal or goals of a child's permanency plan:

1. Return of the child to the child's home.

2. Placement of the child for adoption.

3. Placement of the child with a guardian.

4. Permanent placement of the child with a fit and willing relative.

5. Some other alternative permanent placement, including sustaining care, independent living, or long-term foster care.

(fm) If the goal of the permanency plan is to place the child for adoption, with a guardian, with a fit and willing relative, or in some other alternative permanent placement, the efforts made to achieve that goal.

(g) The conditions, if any, upon which the child will be returned safely to his or her home, including any changes required in the parents' conduct, the child's conduct or the nature of the home.

(h) If the child is 15 years of age or over, a description of the programs and services that are or will be provided to assist the child in preparing for the transition from out-of-home care to

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independent living. The description shall include all of the following:

1. The anticipated age at which the child will be discharged from out-of-home care.
2. The anticipated amount of time available in which to prepare the child for the transition from out-of-home care to independent living.
3. The anticipated location and living situation of the child on discharge from out-of-home care.
4. A description of the assessment processes, tools, and methods that have been or will be used to determine the programs and services that are or will be provided to assist the child in preparing for the transition from out-of-home care to independent living.
5. The rationale for each program or service that is or will be provided to assist the child in preparing for the transition from out-of-home care to independent living, the time frames for delivering those programs or services, and the intended outcome of those programs or services.

(5) Plan Review. (a) Except as provided in s. 48.63(5)(d), the court or a panel appointed under par. (ag) shall review the permanency plan in the manner provided in this subsection not later than 6 months after the date on which the child was first removed from his or her home and every 6 months after a previous review under this subsection for as long as the child is placed outside the home, except that for the review that is required to be conducted not later than 12 months after the child was first removed from his or her home and the reviews that are required to be conducted every 12 months after that review the court shall hold a hearing under sub. (5m) to review the permanency plan, which hearing may be instead of or in addition to the review under this subsection.

(ag) If the court elects not to review the permanency plan, the court shall appoint a panel to review the permanency plan. The panel shall consist of 3 persons who are either designated by an independent agency that has been approved by the chief judge of the judicial administrative district or designated by the agency that prepared the permanency plan. A voting majority of persons on each panel shall be persons who are not employed by the agency that prepared the permanency plan and who are not responsible for providing services to the child or the parents of the child whose permanency plan is the subject of the review.

(am) The court may appoint an independent agency to designate a panel to conduct a permanency plan review under par. (a). If the court in a county having a population of less than 500,000 appoints an independent agency under this paragraph, the county department of the county of the court shall authorize and contract for the purchase of services from the independent agency. If the court in a county having a population of 500,000 or more appoints an independent agency under this paragraph, the department shall authorize and contract for the purchase of services from the independent agency.

(b) The court or the agency shall notify the parents of the child, the child, if he or she is 12 years of age or older, and the child's foster parent, the child's treatment foster parent, the operator of the facility in which the child is living, or the relative with whom the child is living of the date, time, and place of the review, of the issues to be determined as part of the review, and of the fact that they may have an opportunity to be heard at the review by submitting written comments not less than 10 working days before the review or by participating at the review. The court or agency shall notify the person representing the interests of the public, the child's counsel, the child's guardian ad litem, and the child's court-appointed special advocate of the date of the review, of the issues to be determined as part of the review, and of the fact that they may submit written comments not less than 10 working days before the review. The notices under this paragraph shall be provided in writing not less than 30 days before the review and copies of the notices shall be filed in the child's case record.

(c) The court or the panel shall determine each of the following:

1. The continuing necessity for and the safety and appropriateness of the placement.
2. The extent of compliance with the permanency plan by the agency and any other service providers, the child's parents, the child and the child's guardian, if any.

3. The extent of any efforts to involve appropriate service providers in addition to the agency's staff in planning to meet the special needs of the child and the child's parents.

4. The progress toward eliminating the causes for the child's placement outside of his or her home and toward returning the child safely to his or her home or obtaining a permanent placement for the child.

5. The date by which it is likely that the child will be returned to his or her home or placed for adoption, with a guardian or in some other alternative permanent placement.

6. If the child has been placed outside of his or her home, as described in s. 48.365(1), for 15 of the most recent 22 months, not including any period during which the child was a runaway from the out-of-home placement or the first 6 months of any period during which the child was returned to his or her home for a trial home visit, the appropriateness of the permanency plan and the circumstances which prevent the child from any of the following:

- a. Being returned safely to his or her home.
- b. Having a petition for the involuntary termination of parental rights filed on behalf of the child.
- c. Being placed for adoption.
- cg. Being placed with a guardian.
- cm. Being placed in the home of a fit and willing relative of the child.
- d. Being placed in some other alternative permanent placement, including sustaining care, independent living, or long-term foster care.

7. Whether reasonable efforts were made by the agency to achieve the goal of the permanency plan, unless return of the child to the home is the goal of the permanency plan and any of the circumstances specified in s. 48.355(2d)(b)1. to 5. applies.

(d) Notwithstanding s. 48.78(2)(a), the agency that prepared the permanency plan shall, at least 5 days before a review by a review panel, provide to each person appointed to the review panel, the person representing the interests of the public, the child's counsel, the child's guardian ad litem and the child's court-appointed special advocate a copy of the permanency plan and any written comments submitted under par. (b). Notwithstanding s. 48.78(2)(a), a person appointed to a review panel, the person representing the interests of the public, the child's counsel, the child's guardian ad litem and the child's court-appointed special advocate may have access to any other records concerning the child for the purpose of participating in the review. A person permitted access to a child's records under this paragraph may not disclose any information from the records to any other person.

(e) Within 30 days, the agency shall prepare a written summary

of the determinations under par. (c) and shall provide a copy to the court that entered the order, the child or the child's counsel or guardian ad litem, the person representing the interests of the public, the child's parent or guardian, the child's court-appointed special advocate and the child's foster parent, the child's treatment foster parent or the operator of the facility where the child is living.

(f) If the summary prepared under par. (e) indicates that the review panel made recommendations that conflict with the court order or that provide for additional services not specified in the court order, the agency primarily responsible for providing services to the child shall request a revision of the court order.

(5m) Permanency Plan Hearing. (a) The court shall hold a hearing to review the permanency plan and to make the determinations specified in sub. (5)(c) no later than 12 months after the date on which the child was first removed from the home and every 12 months after a previous hearing under this subsection for as long as the child is placed outside the home.

(b) Not less than 30 days before the date of the hearing, the court shall notify the child; the child's parent, guardian, and legal custodian; the child's foster parent or treatment foster parent, the operator of the facility in which the child is living, or the relative with whom the child is living; the child's counsel, the child's guardian ad litem, and the child's court-appointed

special advocate; the agency that prepared the permanency plan; and the person representing the interests of the public of the date, time, and place of the hearing.

(c) Any person who is provided notice of the hearing may have an opportunity to be heard at the hearing by submitting written comments relevant to the determinations specified in sub. (5)(c) not less than 10 working days before the date of the hearing or by participating at the hearing. A foster parent, treatment foster parent, operator of a facility in which a child is living, or relative with whom a child is living who receives notice of a hearing under par.

(b) and an opportunity to be heard under this paragraph does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(d) At least 5 days before the date of the hearing the agency that prepared the permanency plan shall provide a copy of the permanency plan and any written comments submitted under par. (c) to the court, to the child's parent, guardian, and legal custodian, to the person representing the interests of the public, to the child's counsel or guardian ad litem, and to the child's court-appointed special advocate. Notwithstanding s. 48.78(2)(a), the person representing the interests of the public, the child's counsel or guardian ad litem, and the child's court-appointed special advocate may have access to any other records concerning the child for the purpose of participating in the review. A person permitted access to a child's records under this paragraph may not disclose any information from the records to any other person.

(e) After the hearing, the court shall make written findings of fact and conclusions of law relating to the determinations under sub. (5)(c) and shall provide a copy of those findings of fact and conclusions of law to the child; the child's parent, guardian, and legal custodian; the child's foster parent or treatment foster parent, the operator of the facility in which the child is living, or the relative with whom the child is living; the child's court-appointed special advocate; the agency that prepared the permanency plan; and the person representing the interests of the public. The court shall make the findings specified in sub. (5)(c)7. on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the findings of fact and conclusions of law prepared under this paragraph. Findings of fact and conclusions of law that merely reference sub. (5)(c)7. without documenting or referencing that specific information in the findings of fact and conclusions of law or amended findings of fact and conclusions of law that retroactively correct earlier findings of fact and conclusions of law that do not comply with this paragraph are not sufficient to comply with this paragraph.

(f) If the findings of fact and conclusions of law under par. (e) conflict with the child's dispositional order or provide for any additional services not specified in the dispositional order, the court shall revise the dispositional order under s. 48.363 or order a change in placement under s. 48.357, as appropriate.

(6) Rules. The department shall promulgate rules establishing the following:

- (a) Procedures for conducting permanency plan reviews.
- (b) Requirements for training review panels.
- (c) Standards for reasonable efforts to prevent placement of children outside of their homes, while assuring that their health and safety are the paramount concerns, and to make it possible for children to return safely to their homes if they have been placed outside of their homes.
- (d) The format for permanency plans and review panel reports.
- (e) Standards and guidelines for decisions regarding the placement of children.

#### **48.41 VOLUNTARY CONSENT TO TERMINATION OF PARENTAL RIGHTS.**

(1) The court may terminate the parental rights of a parent after the parent has given his or her consent as specified in this section. When such voluntary consent is given as provided in this section, the judge may proceed immediately to a disposition of the matter after considering the standard and factors specified in s. 48.426.

(2) The court may accept a voluntary consent to termination of parental rights only as follows:

(a) The parent appears personally at the hearing and gives his or her consent to the termination of his or her parental rights. The judge may accept the consent only after the judge has explained the effect of termination of parental rights and has questioned the parent, or has permitted an attorney who represents any of the parties to question the parent, and is satisfied that the consent is informed and voluntary.

(b) If the court finds that it would be difficult or impossible for the parent to appear in person at the hearing, the court may accept the written consent of the parent given before an embassy or consul official, a military judge or a judge of any court of record in another county or state or a foreign jurisdiction. This written consent shall be accompanied by the signed findings of the embassy or consul official or judge who accepted the parent's consent. These findings shall recite that the embassy or consul official or judge or an attorney who represents any of the parties questioned the parent and found that the consent was informed and voluntary before the embassy or consul official or judge accepted the consent of the parent.

(c) A person who may be, but who has not been adjudicated as, the father of a nonmarital child may consent to the termination of any parental rights that he may have as provided in par. (a) or (b) or by signing a written, notarized statement which recites that he has been informed of and understands the effect of an order to terminate parental rights and that he voluntarily disclaims any rights that he may have to the child, including the right to notice of proceedings under this subchapter.

(d) If the proceeding to terminate parental rights is held prior to an adoption proceeding in which the petitioner is the child's stepparent, or in which the child's birth parent is a resident of a foreign jurisdiction, the child's birth parent may consent to the termination of any parental rights that he or she may have as provided in par. (a) or (b) or by filing with the court an affidavit witnessed by 2 persons stating that he or she has been informed of and understands the effect of an order to terminate parental rights and that he or she voluntarily disclaims all rights to the child, including the right to notice of proceedings under this subchapter.

(3) If in any proceeding to terminate parental rights voluntarily a guardian ad litem has reason to doubt the capacity of a parent to give informed and voluntary consent to the termination, he or she shall so inform the court. The court shall then inquire into the capacity of that parent in any appropriate way and shall make a finding as to whether or not the parent is capable of giving informed and voluntary consent to the termination. If the court finds that the parent is incapable of knowingly and voluntarily consenting to the termination of parental rights, it shall dismiss the proceedings without prejudice. That dismissal shall not preclude an involuntary termination of the parent's rights under s. 48.415.

**48.415 GROUNDS FOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS.** At the fact-finding hearing the court or jury may make a finding that grounds exist for the termination of parental rights. Grounds for termination of parental rights shall be one of the following:

(1) Abandonment. (a) Abandonment, which, subject to par. (c), shall be established by proving any of the following:

1. That the child has been left without provision for the child's care or support, the petitioner has investigated the circumstances surrounding the matter and for 60 days the petitioner has been unable to find either parent.

1m. That the child has been left by the parent without provision for the child's care or support in a place or manner that exposes the child to substantial risk of great bodily harm, as defined in s. 939.22(14), or death.

1r. That a court of competent jurisdiction has found under s. 48.13(2) or under a law of any other state or a federal law that is comparable to s. 48.13(2) that the child was abandoned when the child was under one year of age or has found that the parent abandoned the child when the child was under one year of age in violation of s. 948.20 or in violation of the law of any



other state or federal law, if that violation would be a violation of s. 948.20 if committed in this state.

2. That the child has been placed, or continued in a placement, outside the parent's home by a court order containing the notice required by s. 48.356(2) or 938.356(2) and the parent has failed to visit or communicate with the child for a period of 3 months or longer.

3. The child has been left by the parent with any person, the parent knows or could discover the whereabouts of the child and the parent has failed to visit or communicate with the child for a period of 6 months or longer.

(b) Incidental contact between parent and child shall not preclude the court from finding that the parent has failed to visit or communicate with the child under par. (a)2. or 3. The time periods under par. (a) 2. or 3. shall not include any periods during which the parent has been prohibited by judicial order from visiting or communicating with the child.

(c) Abandonment is not established under par. (a)2. or 3. if the parent proves all of the following by a preponderance of the evidence:

1. That the parent had good cause for having failed to visit with the child throughout the time period specified in par. (a)2. or 3., whichever is applicable.

2. That the parent had good cause for having failed to communicate with the child throughout the time period specified in par. (a)2. or 3., whichever is applicable.

3. If the parent proves good cause under subd. 2., including good cause based on evidence that the child's age or condition would have rendered any communication with the child meaningless, that one of the following occurred:

a. The parent communicated about the child with the person or persons who had physical custody of the child during the time period specified in par. (a)2. or 3., whichever is applicable, or, if par. (a)2. is applicable, with the agency responsible for the care of the child during the time period specified in par. (a)2.

b. The parent had good cause for having failed to communicate about the child with the person or persons who had physical custody of the child or the agency responsible for the care of the child throughout the time period specified in par. (a)2. or 3., whichever is applicable.

**(1m) Relinquishment.** Relinquishment, which shall be established by proving that a court of competent jurisdiction has found under s. 48.13(2m) that the parent has relinquished custody of the child under s. 48.195(1) when the child was 72 hours old or younger.

**(2) Continuing Need of Protection or Services.** Continuing need of protection or services, which shall be established by proving any of the following:

(a)1. That the child has been adjudged to be a child or an unborn child in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one or more court orders under s. 48.345, 48.347, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363 or 938.365 containing the notice required by s. 48.356(2) or 938.356(2).

2.a. In this subdivision, "reasonable effort" means an earnest and conscientious effort to take good faith steps to provide the services ordered by the court which takes into consideration the characteristics of the parent or child or of the expectant mother or child, the level of cooperation of the parent or expectant mother and other relevant circumstances of the case.

b. That the agency responsible for the care of the child and the family or of the unborn child and expectant mother has made a reasonable effort to provide the services ordered by the court.

3. That the child has been outside the home for a cumulative total period of 6 months or longer pursuant to such orders not including time spent outside the home as an unborn child; and that the parent has failed to meet the conditions established for the safe return of the child to the home and there is a substantial likelihood that the parent will not meet these conditions within the 12-month period following the fact-finding hearing under s. 48.424.

(am)1. That on 3 or more occasions the child has been adjudicated to be in need of protection or services under s. 48.13(3), (3m), (10) or (10m) and, in connection with each of those adjudications, has been placed outside his or her home pursuant to

a court order under s. 48.345 containing the notice required by s. 48.356(2).

2. That the conditions that led to the child's placement outside his or her home under each order specified in subd. 1. were caused by the parent.

**(3) Continuing Parental Disability.** Continuing parental disability, which shall be established by proving that:

(a) The parent is presently, and for a cumulative total period of at least 2 years within the 5 years immediately prior to the filing of the petition has been, an inpatient at one or more hospitals as defined in s. 50.33(2)(a), (b) or (c), licensed treatment facilities as defined in s. 51.01(2) or state treatment facilities as defined in s. 51.01(15) on account of mental illness as defined in s. 51.01(13)(a) or (b) or developmental disability as defined in s. 55.01(2) or (5);

(b) The condition of the parent is likely to continue indefinitely; and

(c) The child is not being provided with adequate care by a relative who has legal custody of the child, or by a parent or a guardian.

**(4) Continuing Denial of Periods of Physical Placement or Visitation.** Continuing denial of periods of physical placement or visitation, which shall be established by proving all of the following:

(a) That the parent has been denied periods of physical placement by court order in an action affecting the family or has been denied visitation under an order under s. 48.345, 48.363, 48.365, 938.345, 938.363 or 938.365 containing the notice required by s. 48.356(2) or 938.356(2).

(b) That at least one year has elapsed since the order denying periods of physical placement or visitation was issued and the court has not subsequently modified its order so as to permit periods of physical placement or visitation.

**(5) Child Abuse.** Child abuse, which shall be established by proving that the parent has exhibited a pattern of physically or sexually abusive behavior which is a substantial threat to the health of the child who is the subject of the petition and proving either of the following:

(a) That the parent has caused death or injury to a child or children resulting in a felony conviction.

(b) That a child has previously been removed from the parent's home pursuant to a court order under s. 48.345 after an adjudication that the child is in need of protection or services under s. 48.13(3) or (3m).

**(6) Failure to Assume Parental Responsibility.** (a) Failure to assume parental responsibility, which shall be established by proving that the parent or the person or persons who may be the parent of the child have never had a substantial parental relationship with the child.

(b) In this subsection, "substantial parental relationship" means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child. In evaluating whether the person has had a substantial parental relationship with the child, the court may consider such factors, including, but not limited to, whether the person has ever expressed concern for or interest in the support, care or well-being of the child, whether the person has neglected or refused to provide care or support for the child and whether, with respect to a person who is or may be the father of the child, the person has ever expressed concern for or interest in the support, care or well-being of the mother during her pregnancy.

**(7) Incestuous Parenthood.** Incestuous parenthood, which shall be established by proving that the person whose parental rights are sought to be terminated is also related, either by blood or adoption, to the child's other parent in a degree of kinship closer than 2nd cousin.

**(8) Homicide or Solicitation to Commit Homicide of Parent.** Homicide or solicitation to commit homicide of a parent, which shall be established by proving that a parent of the child has been a victim of first-degree intentional homicide in violation of s. 940.01, first-degree reckless homicide in violation of s. 940.02 or 2nd-degree intentional homicide in violation of s. 940.05 or a crime under federal law or the law of any other state that is comparable to any of those crimes, or has been

the intended victim of a solicitation to commit first-degree intentional homicide in violation of s. 939.30 or a crime under federal law or the law of any other state that is comparable to that crime, and that the person whose parental rights are sought to be terminated has been convicted of that intentional or reckless homicide, solicitation or crime under federal law or the law of any other state as evidenced by a final judgment of conviction.

**(9) Parenthood as a Result of Sexual Assault.** (a) Parenthood as a result of sexual assault, which shall be established by proving that the child was conceived as a result of a sexual assault in violation of s. 940.225(1), (2) or (3), 948.02(1) or (2) or 948.025. Conception as a result of sexual assault as specified in this paragraph may be proved by a final judgment of conviction or other evidence produced at a fact-finding hearing under s. 48.424 indicating that the person who may be the father of the child committed, during a possible time of conception, a sexual assault as specified in this paragraph against the mother of the child.

(b) If the conviction or other evidence specified in par. (a) indicates that the child was conceived as a result of a sexual assault in violation of s. 948.02 (1) or (2), the mother of the child may be heard on her desire for the termination of the father's parental rights.

**(9m) Commission of a Serious Felony against One of the Person's Children.** (a) Commission of a serious felony against one of the person's children, which shall be established by proving that a child of the person whose parental rights are sought to be terminated was the victim of a serious felony and that the person whose parental rights are sought to be terminated has been convicted of that serious felony as evidenced by a final judgment of conviction.

(b) In this subsection, "serious felony" means any of the following:

1. The commission of, the aiding or abetting of, or the solicitation, conspiracy or attempt to commit, a violation of s. 940.01, 940.02, 940.03 or 940.05 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.01, 940.02, 940.03 or 940.05 if committed in this state.

2. The commission of a violation of s. 940.19(3), 1999 stats., a violation of s. 940.19(2), (4) or (5), 940.225(1) or (2), 948.02(1) or (2), 948.025, 948.03(2)(a) or (3)(a), 948.05, 948.06 or 948.08 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.19(2), (4) or (5), 940.225(1) or (2), 948.02(1) or (2), 948.025, 948.03(2)(a) or (3)(a), 948.05, 948.06 or 948.08 if committed in this state.

3. The commission of a violation of s. 948.21 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 948.21 if committed in this state, that resulted in the death of the victim.

**(10) Prior Involuntary Termination of Parental Rights to Another Child.** Prior involuntary termination of parental rights to another child, which shall be established by proving all of the following:

(a) That the child who is the subject of the petition has been adjudged to be in need of protection or services under s. 48.13(2), (3) or (10).

(b) That, within 3 years prior to the date the court adjudged the child who is the subject of the petition to be in need of protection or services as specified in par. (a), a court has ordered the termination of parental rights with respect to another child of the person whose parental rights are sought to be terminated on one or more of the grounds specified in this section.

#### **48.417 PETITION FOR TERMINATION OF PARENTAL RIGHTS; WHEN REQUIRED.**

**(1) Filing or Joining In Petition; When Required.** Subject to sub. (2), an agency or the district attorney, corporation counsel or other appropriate official designated under s. 48.09 shall file a petition under s. 48.42(1) to terminate the parental rights of a parent or the parents of a child, or, if a petition under s. 48.42(1) to terminate those parental rights has already been filed, the agency, district attorney, corporation counsel or other appropriate official shall join in the petition, if any of the following circumstances apply:

(a) The child has been placed outside of his or her home, as described in s. 48.365(1) or 938.365(1), for 15 of the most recent 22 months, not including any period during which the child was a runaway from the out-of-home placement or the first 6 months of any period during which the child was returned to his or her home

for a trial home visit. If the circumstances specified in this paragraph apply, the petition shall be filed or joined in by the last day of the 15th month, as described in this paragraph, for which the child was placed outside of his or her home.

(b) A court of competent jurisdiction has found under s. 48.13(2) or under a law of any other state or a federal law that is comparable to s. 48.13(2) that the child was abandoned when he or she was under one year of age or has found that the parent abandoned the child when the child was under one year of age in violation of s. 948.20 or in violation of the law of any other state or federal law, if that violation would be a violation of s. 948.20 if committed in this state. If the circumstances specified in this paragraph apply, the petition shall be filed or joined in within 60 days after the date on which the court of competent jurisdiction found that the child was abandoned as described in this paragraph.

(c) A court of competent jurisdiction has found that the parent has committed, has aided or abetted the commission of, or has solicited, conspired, or attempted to commit, a violation of s. 940.01, 940.02, 940.03, or 940.05 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.01, 940.02, 940.03, or 940.05 if committed in this state, and that the victim of that violation is a child of the parent. If the circumstances specified in this paragraph apply, the petition shall be filed or joined in within 60 days after the date on which the court assigned to exercise jurisdiction under this chapter determines, based on a finding that a circumstance specified in this paragraph applies, that reasonable efforts to make it possible for the child to return safely to his or her home are not required.

(d) A court of competent jurisdiction has found that the parent has committed a violation of s. 940.19(3), 1999 stats., a violation of s. 940.19(2), (4), or (5), 940.225(1) or (2), 948.02(1) or (2), 948.025, or 948.03(2)(a) or (3)(a) or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.19(2), (4), or (5), 940.225(1) or (2), 948.02(1) or (2), 948.025, or 948.03(2)(a) or (3)(a) if committed in this state, and that the violation resulted in great bodily harm, as defined in s. 939.22(14), or in substantial bodily harm, as defined in s. 939.22(38), to the child or another child of the parent. If the circumstances specified in this paragraph apply, the petition shall be filed or joined in within 60 days after the date on which the court assigned to exercise jurisdiction under this chapter determines, based on a finding that a circumstance specified in this paragraph applies, that reasonable efforts to make it possible for the child to return safely to his or her home are not required.

**(2) Filing or Joining In Petition; When Not Required.** Notwithstanding that any of the circumstances specified in sub. (1)(a), (b), (c) or (d) may apply, an agency or the district attorney, corporation counsel or other appropriate official designated under s. 48.09 need not file a petition under s. 48.42(1) to terminate the parental rights of a parent or the parents of a child, or, if a petition under s. 48.42(1) to terminate those parental rights has already been filed, the agency, district attorney, corporation counsel or other appropriate official need not join in the petition, if any of the following circumstances apply:

(a) The child is being cared for by a fit and willing relative of the child.

(b) The child's permanency plan indicates and provides documentation that termination of parental rights to the child is not in the best interests of the child.

(c) The agency primarily responsible for providing services to the child and the family under a court order, if required under s. 48.355(2)(b)6. to make reasonable efforts to make it possible for the child to return safely to his or her home, has not provided to the family of the child, consistent with the time period in the child's permanency plan, the services necessary for the safe return of the child to his or her home.

(d) Grounds for an involuntary termination of parental rights under s. 48.415 do not exist.

**(3) Concurrent Adoption Efforts Required.** If a petition is filed or joined in as required under sub. (1), the agency primarily responsible for providing services to the child under a

court order shall, during the pendency of the proceeding on the petition, work with the agency identified in the report under s. 48.425(1)(f) that would be responsible for accomplishing the adoption of the child in processing and approving a qualified family for the adoption of the child.

(4) Notice to Department. If a petition is filed or joined in as required under sub. (1), the person who filed or joined in the petition shall notify the department of that filing or joinder.

#### **48.427 DISPOSITIONS.**

(3m) If the rights of both parents or of the only living parent are terminated under sub. (3) and if a guardian has not been appointed under s. 48.977, the court shall do one of the following:

(a) Transfer guardianship and custody of the child pending adoptive placement to:

1. A county department authorized to accept guardianship under s. 48.57(1)(e) or (hm).
3. A child welfare agency licensed under s. 48.61(5) to accept guardianship.
4. The department.
5. A relative with whom the child resides, if the relative has filed a petition to adopt the child or if the relative is a kinship care relative.
6. An individual who has been appointed guardian of the child by a court of a foreign jurisdiction.

(b) Transfer guardianship of the child to one of the agencies specified under par. (a) 1. to 4. and custody of the child to an individual in whose home the child has resided for at least 12 consecutive months immediately prior to the termination of parental rights or to a relative.

(c) Appoint a guardian under s. 48.977 and transfer guardianship and custody of the child to the guardian.

#### **48.43 COURT ORDERS; CONTENTS AND EFFECT; REVIEW.**

(1) The court shall enter a judgment setting forth its findings and disposition in accordance with s. 48.426 in an order implementing the disposition chosen. If the court dismisses the petition under s. 48.427(2), the order shall contain the reasons for dismissal. If the disposition is for the termination of parental rights under s. 48.427(3), the order shall contain all of the following:

(a) The identity of any agency or individual that has received guardianship of the child or will receive guardianship or custody of the child upon termination and the identity of the agency which will be responsible for securing the adoption of the child or establishing the child in a permanent family setting.

(b) If the child will be in need of continued care and treatment after termination, the agencies and persons responsible.

(c) If an agency receives custody of the child under par. (a), the child's permanency plan prepared under s. 48.38 by the agency. If a permanency plan has not been prepared at the time the order is entered, or if the court enters an order that is not consistent with the permanency plan, the agency shall prepare a permanency plan that is consistent with the order or revise the permanency plan to conform to the order and shall file the plan with the court within 60 days from the date of the order.

(d) A finding that the termination of parental rights is in the best interests of the child.

#### **48.432 ACCESS TO MEDICAL INFORMATION.**

(1) In this section:

(a) "Adoptee" means a person who has been adopted in this state with the consent of his or her birth parent or parents before February 1, 1982.

(ag) "Agency" means a county department or a licensed child welfare agency.

(am) "Birth parent" means either:

1. The mother designated on the individual's or adoptee's original birth certificate.
2. One of the following:
  - a. The adjudicated father.
  - b. If there is no adjudicated father, the husband of the mother at the time the individual or adoptee is conceived or born, or when the parents intermarry under s. 767.60.

(b) "Individual" means a person whose birth parent's rights have been terminated in this state at any time.

(2)(a) The department, or agency contracted with under sub. (9), shall maintain all information obtained under s. 48.427(6)(b) in a centralized birth record file.

(b) Any birth parent whose rights to a child have been terminated in this state at any time, or who consented to the adoption of a child before February 1, 1982, may file with the department, or agency contracted with under sub. (9), any relevant medical or genetic information about the child or the child's birth parents, and the department or agency shall maintain the information in the centralized birth record file.

(3)(a) The department, or agency contracted with under sub. (9), shall release the medical information under sub. (2) to any of the following persons upon request:

1. An individual or adoptee 18 years of age or older.
2. An adoptive parent of an adoptee.
3. The guardian or legal custodian of an individual or adoptee.
4. The offspring of an individual or adoptee if the requester is 18 years of age or older.
5. An agency or social worker assigned to provide services to the individual or adoptee or place the individual for adoption.

(b) Before releasing the information under par. (a), the department, or agency contracted with under sub. (9), shall delete the name and address of the birth parent and the identity of any provider of health care to the individual or adoptee or to the birth parent.

(c) The person making a request under this subsection shall pay a fee for the cost of locating, verifying, purging, summarizing, copying and mailing the medical or genetic information according to a fee schedule established by the department, or agency contracted with under sub. (9), based on ability to pay. The fee may not be more than \$150 and may be waived by the department or agency.

(4) (a) Whenever any person specified under sub. (3) wishes to obtain medical and genetic information about an individual whose birth parent's rights have been terminated in this state at any time, or whose birth parent consented to his or her adoption before February 1, 1982, or medical and genetic information about the birth parents of such an individual or adoptee, and the information is not on file with the department, or agency contracted with under sub. (9), the person may request that the department or agency conduct a search for the birth parents to obtain the information. The request shall be accompanied by a statement from a physician certifying either that the individual or adoptee has or may have acquired a genetically transferable disease or that the individual's or adoptee's medical condition requires access to the information.

(b) Upon receipt of a request under par. (a), the department, or agency contracted with under sub. (9), shall undertake a diligent search for the individual's or adoptee's parents.

(c) Employees of the department and any agency conducting a search under this subsection may not inform any person other than the birth parents of the purpose of the search.

(d) The department, or agency contracted with under sub. (9), shall charge the requester a reasonable fee for the cost of the search. When the department or agency determines that the fee will exceed \$100 for either birth parent, it shall notify the requester. No fee in excess of \$100 per birth parent may be charged unless the requester, after receiving notification under this paragraph, has given consent to proceed with the search.

(e) The department or agency conducting the search shall, upon locating a birth parent, notify him or her of the request and of the need for medical and genetic information.

(f) The department, or agency contracted with under sub. (9), shall release to the requester any medical or genetic information provided by a birth parent under this subsection without disclosing the birth parent's identity or location.

(g) If a birth parent is located but refuses to provide the information requested, the department, or agency contracted with under sub. (9), shall notify the requester, without disclosing the birth parent's identity or location, and the requester may petition the circuit court to order the birth parent

to disclose the information. The court shall grant the motion for good cause shown.

(7)(a) If the department or another agency that maintains records relating to the adoption of an adoptee or the termination of parental rights receives a report from a physician stating that a birth parent or another offspring of the birth parent has acquired or may have a genetically transferable disease, the department or agency shall notify the individual or adoptee of the existence of the disease, if he or she is 18 years of age or over, or notify the individual's or adoptee's guardian, custodian or adoptive parent if the individual or adoptee is under age 18.

(b) If the department or agency receives a report from a physician that an individual or adoptee has acquired or may have a genetically transferable disease, the department or agency shall notify the individual's or adoptee's birth parent of the existence of the disease.

(c) Notice under par. (a) or (b) shall be sent to the most recent address on file with the agency or the department.

(8) Any person, including this state or any political subdivision of this state, who participates in good faith in any requirement of this section shall have immunity from any liability, civil or criminal, that results from his or her actions. In any proceeding, civil or criminal, the good faith of any person participating in the requirements of this section shall be presumed.

(8m) The department, or agency contracted with under sub. (9), shall give priority to all of the following:

(a) Reports filed by physicians under sub. (7).

(b) A request or a court order for medical or genetic information under subs. (3) and (4) if it is accompanied by a statement from a physician certifying that a child has acquired or may have a genetically transferable disease.

(c) Any reports and requests specified by the department by rule.

(9) The department shall promulgate rules to implement this section and may contract with an agency to administer this section.

#### **48.433 ACCESS TO IDENTIFYING INFORMATION ABOUT PARENTS.**

(1) In this section:

(a) "Agency" has the meaning given under s. 48.432 (1)(ag).

(b) "Birth parent" has the meaning given under s. 48.432(1)(am).

(2) Any birth parent whose rights have been terminated in this state at any time, or who has consented to the adoption of his or her child in this state before February 1, 1982, may file with the department, or agency contracted with under sub. (11), an affidavit authorizing the department or agency to provide the child with his or her original birth certificate and with any other available information about the birth parent's identity and location. An affidavit filed under this subsection may be revoked at any time by notifying the department or agency in writing.

(3) Any person 21 years of age or over whose birth parent's rights have been terminated in this state or who has been adopted in this state with the consent of his or her birth parent or parents before February 1, 1982, may request the department, or agency contracted with under sub. (11), to provide the person with the following:

(a) The person's original birth certificate.

(b) Any available information regarding the identity and location of his or her birth parents.

(4) Before acting on the request, the department, or agency contracted with under sub. (11), shall require the requester to provide adequate identification.

(5) The department, or agency contracted with under sub. (11), shall disclose the requested information in either of the following circumstances:

(a) The department, or agency contracted with under sub. (11), has on file unrevoked affidavits filed under sub. (2) from both birth parents.

(b) One of the birth parents was unknown at the time of the proceeding for termination of parental rights or consent adoption and the known birth parent has filed an unrevoked affidavit under sub. (2).

(6)(a) If the department, or agency contracted with under sub. (11), does not have on file an affidavit from each known birth parent,

it shall, within 3 months after the date of the original request, undertake a diligent search for each birth parent who has not filed an affidavit. The search shall be completed within 6 months after the date of the request, unless the search falls within one of the exceptions established by the department by rule. If any information has been provided under sub. (5), the department or agency is not required to conduct a search.

(c) Employees of the department and any agency conducting a search under this subsection may not inform any person other than the birth parents of the purpose of the search.

(d) The department, or agency contracted with under sub. (11), shall charge the requester a reasonable fee for the cost of the search. When the department or agency determines that the fee will exceed \$100 for either birth parent, it shall notify the requester. No fee in excess of \$100 per birth parent may be charged unless the requester, after receiving notification under this paragraph, has given consent to proceed with the search.

(7)(a) The department or agency conducting the search shall, upon locating a birth parent, make at least one verbal contact and notify him or her of the following:

1. The nature of the information requested.

2. The date of the request.

3. The fact that the birth parent has the right to file with the department under sub. (2).

(b) Within 3 working days after contacting a birth parent, the department, or agency contracted with under sub. (11), shall send the birth parent a written copy of the information specified under par. (a) and a blank copy of the affidavit.

(c) If the birth parent files the affidavit, the department, or agency contracted with under sub. (11), shall disclose the requested information if permitted under sub. (5).

(d) If the department or an agency has contacted a birth parent under this subsection, and the birth parent does not file the affidavit, the department may not disclose the requested information.

(e) If, after a search under this subsection, a known birth parent cannot be located, the department, or agency contracted with under sub. (11), may disclose the requested information if the other birth parent has filed an unrevoked affidavit under sub. (2).

(f) The department or agency conducting a search under this subsection may not contact a birth parent again on behalf of the same requester until at least 12 months after the date of the previous contact. Further contacts with a birth parent under this subsection on behalf of the same requester may be made only if 5 years have elapsed since the date of the last contact.

(8)(a) If a birth parent is known to be dead and has not filed an unrevoked affidavit under sub. (2), the department, or agency contracted with under sub. (11), shall so inform the requester. The department or agency may not provide the requester with his or her original birth certificate or with the identity of that parent, but shall provide the requester with any available information it has on file regarding the identity and location of the other birth parent if both of the following conditions exist:

1. The other birth parent has filed an unrevoked affidavit under sub. (2).

2. One year has elapsed since the death of the deceased birth parent.

(b) If a birth parent is known to be dead, the department, or agency contracted with under sub. (11), in addition to the information provided under par. (a), shall provide the requester with any nonidentifying social history information about the deceased parent on file with the department or agency.

(8m) If the department, or agency contracted with under sub. (11), may not disclose the information requested under this section, it shall provide the requester with any nonidentifying social history information about either of the birth parents that it has on file.

(9) The requester may petition the circuit court to order the department or agency designated by the department to disclose any information that may not be disclosed under this section. The court shall grant the petition for good cause shown.

(10) Any person, including this state or any political subdivision of this state, who participates in good faith in any requirement of this section shall have immunity from any liability, civil or criminal, that results from his or her actions. In any proceeding, civil or criminal, the good faith of any person participating in the requirements of this section shall be presumed.

(11) The department shall promulgate rules to implement this section and may contract with an agency to administer this section.

**48.48 AUTHORITY OF DEPARTMENT.** The department shall have authority:

(1) To promote the enforcement of the laws relating to nonmarital children, children in need of protection or services including developmentally disabled children and unborn children in need of protection or services and to take the initiative in all matters involving the interests of those children and unborn children when adequate provision for those interests is not made. This duty shall be discharged in cooperation with the courts, county departments, licensed child welfare agencies and with parents, expectant mothers and other individuals interested in the welfare of children and unborn children.

(2) To assist in extending and strengthening child welfare services with appropriate federal agencies and in conformity with the federal social security act and in cooperation with parents, other individuals and other agencies so that all children needing such services are reached.

(3) To accept guardianship of children when appointed by the court, and to provide special treatment or care when directed by the court. A court may not direct the department to administer psychotropic medications to children who receive special treatment or care under this subsection.

(3m) To accept appointment by an American Indian tribal court in this state as guardian of a child for the purpose of making an adoptive placement for the child if all of the following conditions exist:

(a) The child does not have parents or a guardian or the parental rights to the child have been terminated by a tribal court in accordance with procedures that are substantially equivalent to the procedures specified in subch. VIII.

(b) The tribal court has transferred the guardianship or legal custody, or both, of the child to the department, if the child does not have parents or a guardian.

(c) The tribal court's judgment for termination of parental rights identifies the department as the agency that will receive guardianship or legal custody, or both, of the child upon termination, if the parental rights to the child have been terminated.

(d) The tribal court has signed a written contract that addresses federal and state law and that provides that the tribal court will accept the return of the legal custody or the legal custody and guardianship of the child if the department petitions the tribal court to do so under s. 48.485.

(8) To place children under its guardianship for adoption.

(8m) To enter into agreements with American Indian tribes in this state to implement the Indian child welfare act, 25 USC 1911 to 1963.

(9) To license foster homes or treatment foster homes as provided in s. 48.66(1)(a) for its own use or for the use of licensed child welfare agencies or, if requested to do so, for the use of county departments.

(9m) To license shelter care facilities as provided in s. 48.66(1)(a).

(10) To license child welfare agencies and day care centers as provided in s. 48.66(1)(a).

(11) When notified of the birth or expected birth of a child who is or is likely to be a nonmarital child, to see that the interests of the child are safeguarded, that steps are taken to establish the child's paternity and that there is secured for the child, if possible, the care, support and education the child would receive if he or she were a marital child.

(12)(a) To enter into an agreement to assist in the cost of care of a child after legal adoption when the department has determined that such assistance is necessary to assure the child's adoption. Agreements under this paragraph shall be made in accordance with s. 48.975. Payments shall be made from the appropriation under s. 20.435(3)(dd).

(b) This subsection shall be administered by the department according to criteria, standards and review procedures which it shall establish.

(13) To promulgate rules for the payment of an allowance to children in its institutions and a cash grant to a child being discharged from its institutions.

(15) To license group homes as provided in s. 48.625.

(16) To establish and enforce standards for services provided under ss. 48.345 and 48.347.

(16m) To employ under the unclassified service in an office of the department that is located in a 1st class city a director of the office of urban development who shall be appointed by the secretary to serve at the pleasure of the secretary and who shall coordinate the provision of child welfare services in a county having a population of 500,000 or more with the implementation of the Wisconsin works program under ss. 49.141 to 49.161 in a county having a population of 500,000 or more.

(17)(a) In a county having a population of 500,000 or more, to administer child welfare services and to expend such amounts as may be necessary out of any moneys which may be appropriated for child welfare services by the legislature, which may be donated by individuals or private organizations or which may be otherwise provided. The department shall also have authority to do all of the following:

1. Investigate the conditions surrounding nonmarital children, children in need of protection or services and unborn children in need of protection or services within the county and to take every reasonable action within its power to secure for them the full benefit of all laws enacted for their benefit. Unless provided by another agency, the department shall offer social services to the caretaker of any child, and to the expectant mother of any unborn child, who is referred to the department under the conditions specified in this subdivision. This duty shall be discharged in cooperation with the court and with the public officers or boards legally responsible for the administration and enforcement of these laws.

2. Accept legal custody of children transferred to it by the court under s. 48.355, to accept supervision over expectant mothers of unborn children who are placed under its supervision under s. 48.355, and to provide special treatment or care for children and expectant mothers if ordered by the court and if providing special treatment or care is not the responsibility of the county department under s. 46.215, 51.42, or 51.437. A court may not order the department to administer psychotropic medications to children and expectant mothers who receive special treatment or care under this subdivision.

3. Provide appropriate protection and services for children and the expectant mothers of unborn children in its care, including providing services for those children and their families and for those expectant mothers in their own homes, placing the children in licensed foster homes, treatment foster homes, or group homes in this state or another state within a reasonable proximity to the agency with legal custody, placing the children in the homes of guardians under s. 48.977(2), or contracting for services for those children by licensed child welfare agencies, except that the department may not purchase the educational component of private day treatment programs unless the department, the school board, as defined in s. 115.001(7), and the state superintendent of public instruction all determine that an appropriate public education program is not available. Disputes between the department and the school district shall be resolved by the state superintendent of public instruction.

4. Provide for the moral and religious training of children in its care according to the religious belief of the child or of his or her parents.

5. Place children in a county children's home in the county, to accept guardianship of children when appointed by the court and to place children under its guardianship for adoption.

6. Provide services to the court under s. 48.06.

7. Contract with any parent or guardian or other person for the care and maintenance of any child.

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8. License foster homes or treatment foster homes in accordance with s. 48.75.

9. Use in the media a picture or description of a child in its guardianship for the purpose of finding adoptive parents for that child.

10. Administer kinship care and long-term kinship care as provided in s. 48.57(3m), (3n) and (3p).

11. Contract with the county department under s. 46.215, 51.42 or 51.437 or with a licensed child welfare agency to provide any of the services that the department is authorized to provide under this chapter.

(b) In performing the functions specified in par. (a), the department may avail itself of the cooperation of any individual or private agency or organization interested in the social welfare of children and unborn children in the county.

(c) From the appropriations under s. 20.435(3)(cx), (gx), (kw) and (mx), the department may provide funding for the maintenance of any child who meets all of the following criteria:

1. Is 18 years of age or older.

2. Is enrolled in and regularly attending a secondary education classroom program leading to a high school diploma.

3. Received funding under s. 20.435(3)(cx) or 46.495(1)(d) immediately prior to his or her 18th birthday.

4. Is living in a foster home, treatment foster home, group home,, residential care center for children and youth, or subsidized guardianship home under s. 48.62(5).

(d) The funding provided for the maintenance of a child under par. (c) shall be in an amount equal to that which the child would receive under s. 20.435(3)(cx), (gx), (kw) and (mx) or 46.495(1)(d) if the child were 17 years of age

#### 48.60 CHILD WELFARE AGENCIES LICENSED.

(1) No person may receive children, with or without transfer of legal custody, to provide care and maintenance for 75 days in any consecutive 12 months' period for 4 or more such children at any one time unless that person obtains a license to operate a child welfare agency from the department. To obtain a license under this subsection to operate a child welfare agency, a person must meet the minimum requirements for a license established by the department under s. 48.67, meet the requirements specified in s. 48.685 and pay the applicable license fee under s. 48.615(1)(a) or (b). A license issued under this subsection is valid until revoked or suspended, but shall be reviewed every 2 years as provided in s. 48.66(5).

(2) This section does not include:

(a) A relative or guardian who provides care and maintenance for such children.

(b) A bona fide educational institution whose pupils, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than 2 months of summer vacation.

(c) A public agency.

(d) A hospital or nursing home licensed, approved or supervised by the department.

(e) A licensed foster home or a licensed treatment foster home.

(f) Institutions for mentally deficient children, which institutions have a full-time child population of not less than 150 children and which are subject to examination as provided in s. 46.03(5).

(g) A licensed group home.

(3) Before issuing or continuing any license to a child welfare agency under this section, the department of health and family services shall review the need for the additional placement resources that would be made available by licensing or continuing the license of any child welfare agency after August 5, 1973, providing care authorized under s. 48.61(3). Neither the department of health and family services nor the department of corrections may make any placements to any child welfare agency where the departmental review required under this subsection has failed to indicate the need for the additional placement resources.

(4)(a) In this subsection, "child with a disability" has the meaning given in s. 115.76(5).

(b) Notwithstanding ss. 121.78(3)(a) and 121.79(1)(a), a child welfare agency shall pay for the costs incurred by a school district in providing special education and related services to a child with a disability who has been placed with the child welfare agency under the interstate compact on the placement of children under s. 48.988.

(5)(a) No later than 24 hours after the death of a child who resided in a residential care center for children and youth operated by a child welfare agency, the child welfare agency shall report the death to the department if one of the following applies:

1. There is reasonable cause to believe that the death was related to the use of physical restraint or a psychotropic medication for the child.

3. There is reasonable cause to believe that the death was a suicide.

(c) No later than 14 days after the date of the death reported under par. (a), the department shall investigate the death.

#### 48.61 POWERS AND DUTIES OF CHILD WELFARE AGENCIES.

A child welfare agency shall have authority:

(3) To provide appropriate care and training for children in its legal or physical custody and, if licensed to do so, to place children in licensed foster homes, licensed treatment foster homes, and licensed group homes and in the homes of guardians under s. 48.977(2).

(5) If licensed to do so, to accept guardianship of children when appointed by the court, and to place children under its guardianship for adoption.

(7) To license foster homes or treatment foster homes in accordance with s. 48.75 if licensed to do so.

**48.619 DEFINITION.** In this subchapter, "child" means a person under 18 years of age and also includes, for purposes of counting the number of children for whom a foster home, treatment foster home, or group home may provide care and maintenance, a person 18 years of age or over, but under 19 years of age, who is a full-time student at a secondary school or its vocational or technical equivalent, who is reasonably expected to complete the program before reaching 19 years of age, who was residing in the foster home, treatment foster home, or group home immediately prior to his or her 18th birthday, and who continues to reside in that foster home, treatment foster home, or group home.

#### 48.62 LICENSING OF FOSTER HOMES AND TREATMENT FOSTER HOMES; RATES.

(1)(a) Any person who receives, with or without transfer of legal custody, 4 or fewer children or, if necessary to enable a sibling group to remain together, 6 or fewer children or, if the department promulgates rules permitting a different number of children, the number of children permitted under those rules, to provide care and maintenance for those children shall obtain a license to operate a foster home from the department, a county department or a licensed child welfare agency as provided in s. 48.75.

(b) Any person who receives, with or without transfer of legal custody, 4 or fewer children into a home to provide care and maintenance and structured, professional treatment for those children shall obtain a license to operate a treatment foster home from the department, a county department or a licensed child welfare agency as provided in s. 48.75.

(2) A relative as defined in s. 48.02(15) or as specified in s. 49.19(1)(a) or a guardian of a child, who provides care and maintenance for a child, is not required to obtain the license specified in this section. The department, county department or licensed child welfare agency as provided in s. 48.75 may issue a license to operate a foster home or a treatment foster home to a relative who has no duty of support under s. 49.90(1)(a) and who requests a license to operate a foster home or treatment foster home for a specific child who is either placed by court order or who is the subject of a voluntary placement agreement under s. 48.63. The department, a county department or a licensed child welfare agency may, at the request of a guardian appointed under s. 48.977 or 48.978 or ch. 880, license the guardian's home as a foster home or treatment foster home for the guardian's minor ward who is living in the home and who is placed in the home by court order. Relatives with no duty of support and guardians appointed under s. 48.977 or 48.978 or ch. 880 who are

licensed to operate foster homes or treatment foster homes are subject to the department's licensing rules.

(3) When the department, a county department or a child welfare agency issues a license to operate a foster home or a treatment foster home, the department, county department or child welfare agency shall notify the clerk of the school district in which the foster home or treatment foster home is located that a foster home or treatment foster home has been licensed in the school district.

(4) Monthly payments in foster care shall be provided according to the age-related rates specified in this subsection. Beginning on January 1, 2006, the age-related rates are \$317 for a child under 5 years of age; \$346 for a child 5 to 11 years of age; \$394 for a child 12 to 14 years of age; and \$411 for a child 15 years of age or over. In addition to these grants for basic maintenance, the department shall make supplemental payments for special needs, exceptional circumstances, care in a treatment foster home, and initial clothing allowances according to rules promulgated by the department.

#### **48.625 LICENSING OF GROUP HOMES; FEES.**

(1) Any person who receives, with or without transfer of legal custody, 5 to 8 children, not including children who under sub. (1m) are not counted toward that number, to provide care and maintenance for those children shall obtain a license to operate a group home from the department. To obtain a license under this subsection to operate a group home, a person must meet the minimum requirements for a license established by the department under s. 48.67, meet the requirements specified in s. 48.685 and pay the license fee under sub. (2). A license issued under this subsection is valid until revoked or suspended, but shall be reviewed every 2 years as provided in s. 48.66(5).

(1m) The department may issue a license under sub. (1) authorizing a group home solely to provide a safe and structured living arrangement for children 12 years of age or over who are custodial parents, as defined in s. 49.141(1)(b), or expectant mothers and who are placed in the group home under s. 48.345(3)(cm) or 938.34(3)(cm) and for children 14 years of age or over who are custodial parents, as defined in s. 49.141(1)(b), or expectant mothers and who are placed in the group home under voluntary agreements under s. 48.63(5), and to provide those children with training in parenting skills, including child development, family budgeting, health and nutrition, and other skills to promote the long-term economic independence of those children and the well-being of the children of those children. In licensing a group home described in this subsection, the department may not count toward the number of children whom the group home is licensed to serve the child of a child who is placed in the group home. The department shall promulgate rules establishing standards for a group home described in this subsection. Those rules shall require such a group home to provide for the health, safety, and welfare of the child of any child custodial parent who has been placed in that group home and to have a policy governing visitation between such a child and the child's noncustodial parent.

(2)(a) Before the department may issue a license under sub. (1) to a group home, the group home must pay to the department a biennial fee of \$121, plus a biennial fee of \$18.15 per child, based on the number of children that the group home is licensed to serve. A group home that wishes to continue a license issued under sub. (1) shall pay the fee under this paragraph by the continuation date of the license. A new group home shall pay the fee under this paragraph no later than 30 days before the opening of the group home.

(b) A group home that wishes to continue a license issued under sub. (1) and that fails to pay the fee under par. (a) by the continuation date of the license or a new group home that fails to pay the fee under par. (a) by 30 days before the opening of the group home shall pay an additional fee of \$5 per day for every day after the deadline that the group home fails to pay the fee.

(2m) When the department issues a license to operate a group home, the department shall notify the clerk of the school district in which the group home is located that a group home has been licensed in the school district.

(3) This section does not apply to a foster home licensed under s. 48.62(1)(a) or to a treatment foster home licensed under s. 48.62(1)(b).

#### **48.627 FOSTER, TREATMENT FOSTER AND FAMILY-OPERATED GROUP HOME PARENT INSURANCE AND LIABILITY.**

(1) In this section, "family-operated group home" means a home licensed under s. 48.625 for which the licensee is one or more individuals who operate not more than one group home.

(2)(a) Before the department, a county department or a licensed child welfare agency may issue, renew or continue a foster home, treatment foster home or family-operated group home license, the licensing agency shall require the applicant to furnish proof satisfactory to the licensing agency that he or she has homeowner's or renter's liability insurance that provides coverage for negligent acts or omissions by children placed in a foster home, treatment foster home or family-operated group home that result in bodily injury or property damage to 3rd parties.

(b) A licensing agency may, in accordance with rules promulgated by the department, waive the requirement under par. (a) if the applicant shows that he or she is unable to obtain the required insurance, that he or she has had a homeowner's or renter's liability insurance policy canceled or that payment of the premium for the required insurance would cause undue financial hardship.

(c) The department shall conduct a study to determine the cost-effectiveness of purchasing insurance to provide standard homeowner's or renter's liability insurance coverage for applicants who are granted a waiver under par. (b). If the department determines that it would be cost-effective to purchase such insurance, it may purchase the insurance from the appropriations under s. 20.435(3)(cf) and (pd).

(d) The licensing agency shall specify the amounts of liability insurance coverage required under par. (a).

(2c) The department shall determine the cost-effectiveness of purchasing private insurance that would provide coverage to foster, treatment foster and family-operated group home parents for acts or omissions by or affecting a child who is placed in a foster home, a treatment foster home or a family-operated group home. If this private insurance is cost-effective and available, the department shall purchase the insurance from the appropriations under s. 20.435(3)(cf) and (pd). If the insurance is unavailable, payment of claims for acts or omissions by or affecting a child who is placed in a foster home, a treatment foster home or a family-operated group home shall be in accordance with subs. (2m) to (3).

(2m) Within the limits of the appropriations under s. 20.435(3)(cf) and (pd), the department shall pay claims to the extent not covered by any other insurance and subject to the limitations specified in sub. (3), for bodily injury or property damage sustained by a licensed foster, treatment foster or family-operated group home parent or a member of the foster, treatment foster or family-operated group home parent's family as a result of the act of a child in the foster, treatment foster or family-operated group home parent's care.

(2s) Within the limits of the appropriations under s. 20.435(3)(cf) and (pd), the department may pay claims to the extent not covered by any other insurance and subject to the limitations specified in sub. (3), for all of the following:

(a) Acts or omissions of the foster, treatment foster or family-operated group home parent that result in bodily injury to the child who is placed in the foster home, treatment foster home or family-operated group home or that form the basis for a civil action for damages by the foster child's parent against the foster, treatment foster or family-operated group home parent.

(b) Bodily injury or property damage caused by an act or omission of a child who is placed in the foster, treatment foster or family-operated group home parent's care for which the foster, treatment foster or family-operated group home parent becomes legally liable.

(3)(b) A claim under sub. (2m) shall be submitted to the department within 90 days after the bodily injury or property damage occurs. A claim under sub. (2s) shall be submitted within 90 days after a foster, treatment foster or family-operated

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group home parent learns that a legal action has been commenced against that parent. No claim may be paid under this subsection unless it is submitted within the time limits specified in this paragraph.

(c) The department shall review and approve in whole or in part or disapprove all claims received under this subsection during each 3-month period beginning with the period from July 1, 1985, to September 30, 1985.

(d) No claim may be approved in an amount exceeding the total amount available for paying claims under this subsection in the fiscal year during which the claim is submitted. No claim for property damage sustained by a foster, treatment foster or family-operated group home parent or a member of a foster, treatment foster or family-operated group home parent's family may be approved in an amount exceeding \$250,000.

(e) The department may not approve a claim unless the foster, treatment foster or family-operated group home parent submits with the claim evidence that is satisfactory to the department of the cause and value of the claim and evidence that insurance coverage is unavailable or inadequate to cover the claim. If insurance is available but inadequate, the department may approve a claim only for the amount of the value of the claim that it determines is in excess of the amount covered by insurance.

(f) If the total amount of the claims approved during any calendar quarter exceeds 25% of the total funds available during the fiscal year for purposes of this subsection plus any unencumbered funds remaining from the previous quarter, the department shall prorate the available funds among the claimants with approved claims. The department shall also prorate any unencumbered funds remaining in the appropriation under s. 20.435(3)(cf) at the end of each fiscal year among the claimants whose claims were prorated during the fiscal year. Payment of a prorated amount from unencumbered funds remaining at the end of the fiscal year constitutes a complete payment of the claim for purposes of this program, but does not prohibit a foster parent or treatment foster parent from submitting a claim under s. 16.007 for the unpaid portion.

(g) A claimant whose claim is denied or whose payment is prorated is not entitled to a hearing under ch. 227 on the issue of the denial or proration.

(h) If a claim by a foster, treatment foster or family-operated group home parent or a member of the foster, treatment foster or family-operated group home parent's family is approved, the department shall deduct from the amount approved \$100 less any amount deducted by an insurance company from a payment for the same claim, except that a foster, treatment foster or family-operated group home parent and his or her family are subject to only one deductible for all claims filed in a fiscal year.

(i) The department may enter into a contract for the administration of this subsection.

(4) Except as provided in s. 895.485, the department is not liable for any act or omission by or affecting a child who is placed in a foster home, treatment foster home or family-operated group home, but shall, as provided in this section, pay claims described under sub. (2m) and may pay claims described under sub. (2s) or may purchase insurance to cover such claims as provided for under sub. (2c), within the limits of the appropriations under s. 20.435(3)(cf) and (pd).

(5) The attorney general may represent a foster, treatment foster or family-operated group home parent in any civil action arising out of an act or omission of the foster, treatment foster or family-operated group home parent while acting in his or her capacity as a foster, treatment foster or family-operated group home parent.

#### 48.63 RESTRICTIONS ON PLACEMENTS.

(1) Acting under court order or voluntary agreement, the child's parent or guardian or the department of health and family services, the department of corrections, a county department, or a child welfare agency licensed to place children in foster homes, treatment foster homes, or group homes may place a child or negotiate or act as intermediary for the placement of a child in a foster home, treatment foster home, or group home. Voluntary agreements under this subsection may not be used for placements in facilities other than foster, treatment foster, or group homes and may not be

extended. A foster home or treatment foster home placement under a voluntary agreement may not exceed 180 days from the date on which the child was removed from the home under the voluntary agreement. A group home placement under a voluntary agreement may not exceed 15 days from the date on which the child was removed from the home under the voluntary agreement, except as provided in sub. (5). These time limitations do not apply to placements made under s. 48.345, 938.183, 938.34, or 938.345. Voluntary agreements may be made only under this subsection and sub. (5)(b) and shall be in writing and shall specifically state that the agreement may be terminated at any time by the parent or guardian or by the child if the child's consent to the agreement is required. The child's consent to the agreement is required whenever the child is 12 years of age or older.

(2) No person may place a child or offer or hold himself or herself out as able to place a child, except as provided in this section. Enrollment of a child by a parent or guardian in an educational institution shall not constitute a placement for the purposes of this section.

(3) Subsection (1) does not apply to the placement of a child for adoption. Adoptive placements may be made only as provided under ss. 48.833, 48.835, 48.837 and 48.839.

(4) A permanency plan under s. 48.38 is required for each child placed in a foster home or treatment foster home under sub. (1). If the child is living in a foster home or treatment foster home under a voluntary agreement, the agency that negotiated or acted as intermediary for the placement shall prepare the permanency plan within 60 days after the date on which the child was removed from his or her home under the voluntary agreement. A copy of each plan shall be provided to the child if he or she is 12 years of age or over and to the child's parent or guardian. If the agency that arranged the voluntary placement intends to seek a court order to place the child outside of his or her home at the expiration of the voluntary placement, the agency shall prepare a revised permanency plan and file that revised plan with the court prior to the date of the hearing on the proposed placement.

(5)(a) Subsection (1) does not apply to the voluntary placement under par. (b) of a child in a group home described in s. 48.625(1m). Such placements may be made only as provided in par. (b).

(b) If a child who is at least 14 years of age, who is a custodial parent, as defined in s. 49.141(1)(b), or an expectant mother, and who is in need of a safe and structured living arrangement and the parent or guardian of the child consent, a child welfare agency licensed to place children in group homes may place the child or arrange the placement of the child in a group home described in s. 48.625(1m). Before placing a child or arranging the placement of a child under this paragraph, the child welfare agency shall report any suspected abuse or neglect of the child as required under s. 48.981(2). A voluntary agreement to place a child in a group home described in s. 48.625(1m) may be made only under this paragraph, shall be in writing, and shall specifically state that the agreement may be terminated at any time by the parent, guardian, or child. An initial placement under this paragraph may not exceed 180 days from the date on which the child was removed from the home under the voluntary agreement, but may be extended as provided in par. (d)3. to 6. An initial placement under this paragraph of a child who is under 16 years of age on the date of the initial placement may be extended as provided in par. (d)3. to 6. no more than once.

(c) A permanency plan under s. 48.38 is required for each child placed in a group home under par. (b) and for any child of that child who is residing with that child. The agency that placed the child or that arranged the placement of the child shall prepare the plan within 60 days after the date on which the child was removed from his or her home under the voluntary agreement and shall provide a copy of the plan to the child and the child's parent or guardian.

(d)1. In this paragraph, "independent reviewing agency" means a person contracted with under subd. 2. to review permanency plans and placements under subds. 3. to 6.



2. An agency that places children under par. (b) or that arranges those placements shall contract with another agency licensed under s. 48.61(3) to place children or with a county department to review the permanency plans and placements of those children and of any children of those children who are residing with those children as provided in subds. 3. to 6.

3. If the agency that has placed a child under par. (b) or that has arranged the placement of the child wishes to extend the placement of the child, the agency shall prepare a revised permanency plan for that child and for any child of that child who is residing with that child and submit the revised permanency plan or plans, together with a request for a review of the revised permanency plan or plans and the child's placement, to the independent reviewing agency before the expiration of the child's placement. The request shall include a statement that an extension of the child's placement would be in the best interests of the child, together with reliable and credible information in support of that statement, a statement that the child and the parent or guardian of the child consent to the extension of the child's placement, and a request that the independent reviewing agency approve an extension of the child's placement. On receipt of a revised permanency plan or plans and a request for review, the independent reviewing agency shall set a time and place for the review and shall advise the agency that placed the child or that arranged the placement of the child of the time and place of the review.

4. Not less than 10 days before the review, the agency that placed the child or that arranged the placement of the child shall provide a copy of the revised permanency plan or plans and the request for review submitted under subd. 3. and notice of the time and place of the review to the child, the parent, guardian, and legal custodian of the child, and the operator of the group home in which the child is placed, together with notice of the issues to be determined as part of the permanency plan review and notice of the fact that those persons may have the opportunity to be heard at the review by submitting written comments to that agency or the independent reviewing agency before the review or by participating at the review.

5. At the review, any person specified in subd. 4. may present information relevant to the issue of extension and information relevant to the determinations specified in s. 48.38(5)(c). After receiving that information, the independent reviewing agency shall make the determinations specified in s. 48.38(5)(c) and determine whether an extension of the child's placement is in the best interests of the child and whether the child and the parent or guardian of the child consent to the extension. If the independent reviewing agency determines that the extension is in the best interests of the child and that the child and the parent or guardian of the child consent to the extension, the independent reviewing agency shall approve, in writing, an extension of the placement for a specified period of time not to exceed 6 months, stating the reason for the approval, and the agency that placed the child or that arranged the placement of the child may extend the child's placement for the period of time approved. If the independent reviewing agency determines that the extension is not in the best interests of the child or that the child and the parent or guardian of the child do not consent to the extension, the independent reviewing agency shall, in writing, disapprove an extension of the placement, stating the reason for the disapproval, and the agency that placed the child or that arranged the placement of the child may not extend the placement of the child past the expiration date of the voluntary placement unless the agency obtains a court order placing the child in the group home after the expiration date of the voluntary placement. Notwithstanding the approval of an extension under this subdivision, the child or the parent or guardian of the child may terminate the placement at any time during the extension period.

6. Within 30 days after the review, the agency that prepared the revised permanency plan or plans shall prepare a written summary of the determinations specified in s. 48.38(5)(c) that were made under subd. 5. and shall provide a copy of that summary to the independent reviewing agency, the child, the parent, guardian, and legal custodian of the child, and the operator of the group home in which the child was placed.

(1) DEFINITION. In this section, "agency" means the department of health and family services, the department of corrections, a county department or a licensed child welfare agency authorized to place children in foster homes, treatment foster homes, or group homes.

(1m) Foster Home, Treatment Foster Home and Group Home Agreements. If an agency places a child in a foster home, treatment foster home or group home under a court order or voluntary agreement under s. 48.63, the agency shall enter into a written agreement with the head of the home. The agreement shall provide that the agency shall have access at all times to the child and the home, and that the child will be released to the agency whenever, in the opinion of the agency placing the child or the department, the best interests of the child require it. If a child has been in a foster home, treatment foster home or group home for 6 months or more, the agency shall give the head of the home written notice of intent to remove the child, stating the reasons for the removal. The child may not be removed before completion of the hearing under sub. (4)(a) or (c), if requested, or 30 days after the receipt of the notice, whichever is later, unless the safety of the child requires it or, in a case in which the reason for removal is to place the child for adoption under s. 48.833, unless all of the persons who have the right to request a hearing under sub. (4)(a) or (c) sign written waivers of objection to the proposed removal. If the safety of the child requires earlier removal, s. 48.19 shall apply. If an agency removes a child from an adoptive placement, the head of the home shall have no claim against the placing agency for the expense of care, clothing or medical treatment.

(1r) Notification of School District. When an agency places a school-age child in a foster home, a treatment foster home or a group home, the agency shall notify the clerk of the school district in which the foster home, treatment foster home or group home is located that a school-age child has been placed in a foster home, treatment foster home or group home in the school district.

(2) Supervision of Foster Home, Treatment Foster Home and Group Home Placements. Every child in a foster home, treatment foster home or group home shall be under the supervision of an agency.

(4) Orders Affecting the Head of a Home or the Children.

(a) Any decision or order issued by an agency that affects the head of a foster, treatment foster or group home or the children involved may be appealed to the department under fair hearing procedures established under department rules. The department shall, upon receipt of an appeal, give the head of the home reasonable notice and opportunity for a fair hearing. The department may make such additional investigation as the department considers necessary. The department shall give notice of the hearing to the head of the home and to the departmental subunit, county department or child welfare agency that issued the decision or order. Each person receiving notice is entitled to be represented at the hearing. At all hearings conducted under this subsection, the head of the home, or a representative of the head of the home, shall have an adequate opportunity, notwithstanding s. 48.78(2)(a), to examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing, to bring witnesses, to establish all pertinent facts and circumstances, and to question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses. The department shall grant a continuance for a reasonable period of time when an issue is raised for the first time during a hearing. This requirement may be waived with the consent of the parties. The decision of the department shall be based exclusively on evidence introduced at the hearing. A transcript of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the findings of the hearing examiner shall constitute the exclusive record for decision by the department. The department shall make the record available at any reasonable time and at an accessible place to the head of the home or his or her representative. Decisions by the

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department shall specify the reasons for the decision and identify the supporting evidence. No person participating in an agency action being appealed may participate in the final administrative decision on that action. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the head of the home and to the departmental subunit, county department or child welfare agency that issued the decision or order. The decision shall be binding on all parties concerned.

(b) Judicial review of the department's decision may be had as provided in ch. 227.

(c) The circuit court for the county where the child is placed has jurisdiction upon petition of any interested party over a child who is placed in a foster home, treatment foster home or group home. The circuit court may call a hearing, at which the head of the home and the supervising agency under sub. (2) shall be present, for the purpose of reviewing any decision or order of that agency involving the placement and care of the child. If the child has been placed in a foster home, the foster parent may present relevant evidence at the hearing. The court shall determine the case so as to promote the best interests of the child.

**48.66 LICENSING DUTIES OF THE DEPARTMENT.**

(1)(a) Except as provided in s. 48.715(6) and (7), the department shall license and supervise child welfare agencies, as required by s. 48.60, group homes, as required by s. 48.625, shelter care facilities, as required by s. 938.22, and day care centers, as required by s. 48.65. The department may license foster homes or treatment foster homes, as provided by s. 48.62, and may license and supervise county departments in accordance with the procedures specified in this section and in ss. 48.67 to 48.74.

(b) Except as provided in s. 48.715(6), the department of corrections may license a child welfare agency to operate a secured child caring institution, as defined in s. 938.02(15g), for holding in secure custody juveniles who have been convicted under s. 938.183 or adjudicated delinquent under s. 938.183 or 938.34(4d), (4h) or (4m) and referred to the child welfare agency by the court or the department of corrections and to provide supervision, care and maintenance for those juveniles. The department of corrections may also license not more than 5 county departments, as defined in s. 938.02(2g), or not more than 5 consortia of county departments to operate not more than 5 group homes that have been licensed under par. (a) as secured group homes, as defined in s. 938.02(15p), for holding in secure custody juveniles who have been convicted under s. 938.183 or adjudicated delinquent under s. 938.183 or 938.34(4m) and referred to the county department by the court and to provide supervision, care and maintenance for those juveniles.

(c) A license issued under par. (a) or (b), other than a license to operate a foster home, treatment foster home, secured child caring institution or secured group home, is valid until revoked or suspended. A license issued under this subsection to operate a foster home, treatment foster home, secured child caring institution or secured group home may be for any term not to exceed 2 years from the date of issuance. No license issued under par. (a) or (b) is transferable.

(2) The department shall prescribe application forms to be used by all applicants for licenses from it. The application forms prescribed by the department shall require that the social security numbers of all applicants for a license to operate a child welfare agency, group home, shelter care facility or day care center who are individuals, other than an individual who does not have a social security number and who submits a statement made or subscribed under oath or affirmation as required under sub. (2m)(a)2., be provided and that the federal employer identification numbers of all applicants for a license to operate a child welfare agency, group home, shelter care facility or day care center who are not individuals be provided.

(2m)(a)1. Except as provided in subd. 2., the department of health and family services shall require each applicant for a license under sub. (1)(a) to operate a child welfare agency, group home, shelter care facility or day care center who is an individual to provide that department with the applicant's social security number, and shall require each applicant for a license under sub. (1)(a) to operate a child welfare agency, group home, shelter care facility or day care

center who is not an individual to provide that department with the applicant's federal employer identification number, when initially applying for or applying to continue the license.

2. If an applicant who is an individual does not have a social security number, the applicant shall submit a statement made or subscribed under oath or affirmation to the department of health and family services that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development. A license issued in reliance upon a false statement submitted under this subdivision is invalid.

(am)1. Except as provided in subd. 2., the department of corrections shall require each applicant for a license under sub. (1)(b) to operate a secured child caring institution who is an individual to provide that department with the applicant's social security number when initially applying for or applying to renew the license.

2. If an applicant who is an individual does not have a social security number, the applicant shall submit a statement made or subscribed under oath or affirmation to the department of corrections that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development. A license issued in reliance upon a false statement submitted under this subdivision is invalid.

(b) If an applicant who is an individual fails to provide the applicant's social security number to the department of health and family services or if an applicant who is not an individual fails to provide the applicant's federal employer identification number to that department, that department may not issue or continue a license under sub. (1)(a) to operate a child welfare agency, group home, shelter care facility or day care center to or for the applicant unless the applicant is an individual who does not have a social security number and the applicant submits a statement made or subscribed under oath or affirmation as required under par. (a)2.

(bm) If an applicant who is an individual fails to provide the applicant's social security number to the department of corrections, that department may not issue or renew a license under sub. (1)(b) to operate a secured child caring institution to or for the applicant unless the applicant does not have a social security number and the applicant submits a statement made or subscribed under oath or affirmation as required under par. (a)2.

(c) The department of health and family services may not disclose any information obtained under par. (a)1. to any person except to the department of revenue for the sole purpose of requesting certifications under s. 73.0301 or on the request of the department of workforce development under s. 49.22(2m).

(cm) The department of corrections may not disclose any information obtained under par. (am)1. to any person except on the request of the department of workforce development under s. 49.22(2m).

(3) The department shall prescribe the form and content of records to be kept and information to be reported by persons licensed by it.

(5) A child welfare agency, group home, day care center or shelter care facility license, other than a probationary license, is valid until revoked or suspended, but shall be reviewed every 2 years after the date of issuance as provided in this subsection. At least 30 days prior to the continuation date of the license, the licensee shall submit to the department an application for continuance of the license in the form and containing the information that the department requires. If the minimum requirements for a license established under s. 48.67 are met, the application is approved, the applicable fees referred to in ss. 48.68(1) and 48.685(8) are paid and any forfeiture under s. 48.715(3)(a) or penalty under s. 48.76 that is due is paid, the department shall continue the license for an additional 2-year period, unless sooner suspended or revoked. If the application is not timely filed, the department shall issue a warning to the licensee. If the licensee fails to apply for continuance of the license within 30 days after receipt of the

warning, the department may revoke the license as provided in s. 48.715(4) and (4m)(b).

**48.67 RULES GOVERNING CHILD WELFARE AGENCIES, DAY CARE CENTERS, FOSTER HOMES, TREATMENT FOSTER HOMES, GROUP HOMES, SHELTER CARE FACILITIES AND COUNTY DEPARTMENTS.** The department shall promulgate rules establishing minimum requirements for the issuance of licenses to, and establishing standards for the operation of, child welfare agencies, day care centers, foster homes, treatment foster homes, group homes, shelter care facilities, and county departments. These rules shall be designed to protect and promote the health, safety, and welfare of the children in the care of all licensees. The department shall consult with the department of commerce and the department of public instruction before promulgating these rules. In establishing the minimum requirements for the issuance of licenses to day care centers that provide care and supervision for children under one year of age, the department shall include a requirement that all licensees who are individuals and all employees and volunteers of a licensee who provide care and supervision for children receive, before the date on which the license is issued or the employment or volunteer work commences, whichever is applicable, training in the most current medically accepted methods of preventing sudden infant death syndrome.

**48.685 CRIMINAL HISTORY AND CHILD ABUSE RECORD SEARCH.**

(1) In this section:

(ag)1. "Caregiver" means any of the following:

a. A person who is, or is expected to be, an employee or contractor of an entity, who is or is expected to be under the control of the entity, as defined by the department by rule, and who has, or is expected to have, regular, direct contact with clients of the entity.

b. A person who has, or is seeking, a license, certification or contract to operate an entity.

2. "Caregiver" does not include a person who is certified as an emergency medical technician under s. 146.50 if the person is employed, or seeking employment, as an emergency medical technician and does not include a person who is certified as a first responder under s. 146.50 if the person is employed, or seeking employment, as a first responder.

(am) "Client" means a child who receives direct care or treatment services from an entity.

(ar) "Contractor" means, with respect to an entity, a person, or that person's agent, who provides services to the entity under an express or implied contract or subcontract, including a person who has staff privileges at the entity.

(av) "Direct contact" means face-to-face physical proximity to a client that affords the opportunity to commit abuse or neglect of a client or to misappropriate the property of a client.

(b) "Entity" means a child welfare agency that is licensed under s. 48.60 to provide care and maintenance for children, to place children for adoption or to license foster homes or treatment foster homes; a foster home or treatment foster home that is licensed under s. 48.62; a group home that is licensed under s. 48.625; a shelter care facility that is licensed under s. 938.22; a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13(14); a day care provider that is certified under s. 48.651; or a temporary employment agency that provides caregivers to another entity.

(bg) "Foster home" includes a placement for adoption under s. 48.833 of a child for whom adoption assistance will be provided under s. 48.975 after the adoption is finalized.

(bm) "Nonclient resident" means a person who resides, or is expected to reside, at an entity, who is not a client of the entity and who has, or is expected to have, regular, direct contact with clients of the entity.

(br) "Reservation" means land in this state within the boundaries of a reservation of a tribe or within the bureau of Indian affairs service area for the Ho-Chunk Nation.

(c) "Serious crime" means a violation of s. 940.19 (3), 1999 stats., a violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19(2), (4), (5) or (6), 940.22(2) or (3), 940.225(1), (2) or (3), 940.285(2), 940.29, 940.295, 948.02(1) or (2), 948.025, 948.03(2), 948.05, 948.055, 948.06, 948.07, 948.08, 948.11(2)(a) or (am),

948.12, 948.13, 948.21(1) or 948.30 or a violation of the law of any other state or United States jurisdiction that would be a violation of s. 940.19(3), 1999 stats., or a violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19(2), (4), (5) or (6), 940.22(2) or (3), 940.225(1), (2) or (3), 940.285(2), 940.29, 940.295, 948.02(1) or (2), 948.025, 948.03(2), 948.05, 948.055, 948.06, 948.07, 948.08, 948.11(2)(a) or (am), 948.12, 948.13, 948.21(1) or 948.30 if committed in this state.

(d) "Treatment foster home" includes a placement for adoption under s. 48.833 of a child for whom adoption assistance will be provided under s. 48.975 after the adoption is finalized.

(e) "Tribe" means a federally recognized American Indian tribe or band in this state.

(2)(am) The department, a county department, a child welfare agency or a school board shall obtain all of the following with respect to a caregiver specified in sub.

(1)(ag)1.b., a nonclient resident of an entity and a person under 18 years of age, but not under 12 years of age, who is a caregiver of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13(14) or of a day care provider that is certified under s. 48.651:

1. A criminal history search from the records maintained by the department of justice.

2. Information that is contained in the registry under s. 146.40(4g) regarding any findings against the person.

3. Information maintained by the department of regulation and licensing regarding the status of the person's credentials, if applicable.

4. Information maintained by the department regarding any substantiated reports of child abuse or neglect against the person.

5. Information maintained by the department under this section and under ss. 48.651(2m), 48.75(1m) and 120.13(14) regarding any denial to the person of a license, continuation or renewal of a license, certification or a contract to operate an entity for a reason specified in sub. (4m)(a)1. to 5. and regarding any denial to the person of employment at, a contract with or permission to reside at an entity for a reason specified in sub. (4m)(b)1. to 5. If the information obtained under this subdivision indicates that the person has been denied a license, continuation or renewal of a license, certification, a contract, employment or permission to reside as described in this subdivision, the department, a county department, a child welfare agency or a school board need not obtain the information specified in subds. 1. to 4.

(b)1. Every entity shall obtain all of the following with respect to a caregiver of the entity:

a. A criminal history search from the records maintained by the department of justice.

b. Information that is contained in the registry under s. 146.40(4g) regarding any findings against the person.

c. Information maintained by the department of regulation and licensing regarding the status of the person's credentials, if applicable.

d. Information maintained by the department regarding any substantiated reports of child abuse or neglect against the person.

e. Information maintained by the department under this section and under ss. 48.651(2m), 48.75(1m) and 120.13(14) regarding any denial to the person of a license, continuation or renewal of a license, certification or a contract to operate an entity for a reason specified in sub. (4m)(a)1. to 5. and regarding any denial to the person of employment at, a contract with or permission to reside at an entity for a reason specified in sub. (4m)(b)1. to 5. If the information obtained under this subd. 1.e. indicates that the person has been denied a license, continuation or renewal of a license, certification, a contract, employment or permission to reside as described in this subd. 1.e., the entity need not obtain the information specified in subd. 1.a. to d.

4. Subdivision 1. does not apply with respect to a person under 18 years of age, but not under 12 years of age, who is a caregiver or nonclient resident of a day care center that is licensed under s. 48.65 or established or contracted for under

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s. 120.13(14) or of a day care provider that is certified under s. 48.651 and with respect to whom the department, a county department or a school board is required under par. (am)(intro.) to obtain the information specified in par. (am)1. to 5.

(bb) If information obtained under par. (am) or (b)1. indicates a charge of a serious crime, but does not completely and clearly indicate the final disposition of the charge, the department, county department, child welfare agency, school board or entity shall make every reasonable effort to contact the clerk of courts to determine the final disposition of the charge. If a background information form under sub. (6)(a) or (am) indicates a charge or a conviction of a serious crime, but information obtained under par. (am) or (b)1. does not indicate such a charge or conviction, the department, county department, child welfare agency, school board or entity shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and the final disposition of the complaint. If information obtained under par. (am) or (b)1., a background information form under sub. (6)(a) or (am) or any other information indicates a conviction of a violation of s. 940.19(1), 940.195, 940.20, 941.30, 942.08, 947.01 or 947.013 obtained not more than 5 years before the date on which that information was obtained, the department, county department, child welfare agency, school board or entity shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and judgment of conviction relating to that violation.

(bd) Notwithstanding pars. (am) and (b)1., the department, a county department, a child welfare agency or a school board is not required to obtain the information specified in par. (am)1. to 5., and an entity is not required to obtain the information specified in par. (b)1.a. to e., with respect to a person under 18 years of age whose background information form under sub. (6)(am) indicates that the person is not ineligible to be employed, contracted with or permitted to reside at an entity for a reason specified in sub. (4m)(b)1. to 5. and with respect to whom the department, county department, child welfare agency, school board or entity otherwise has no reason to believe that the person is ineligible to be employed, contracted with or permitted to reside at an entity for any of those reasons. This paragraph does not preclude the department, a county department, a child welfare agency or a school board from obtaining, at its discretion, the information specified in par. (am)1. to 5. with respect to a person described in this paragraph who is a nonclient resident or a prospective nonclient resident of an entity.

(bg) If an entity employs or contracts with a caregiver for whom, within the last 4 years, the information required under par. (b)1. a. to c. and e. has already been obtained by another entity, the entity may obtain that information from that other entity, which shall provide the information, if possible, to the requesting entity. If an entity cannot obtain the information required under par. (b)1.a. to c. and e. from another entity or if an entity has reasonable grounds to believe that any information obtained from another entity is no longer accurate, the entity shall obtain that information from the sources specified in par. (b)1.a. to c. and e.

(bm) If the person who is the subject of the search under par. (am) or (b)1. is not a resident of this state, or if at any time within the 3 years preceding the date of the search that person has not been a resident of this state, or if the department, county department, child welfare agency, school board or entity determines that the person's employment, licensing or state court records provide a reasonable basis for further investigation, the department, county department, child welfare agency, school board or entity shall make a good faith effort to obtain from any state or other United States jurisdiction in which the person is a resident or was a resident within the 3 years preceding the date of the search information that is equivalent to the information specified in par. (am)1. or (b)1.a. The department, county department, child welfare agency, school board or entity may require the person to be fingerprinted on 2 fingerprint cards, each bearing a complete set of the person's fingerprints. The department of justice may provide for the submission of the fingerprint cards to the federal bureau of investigation for the purposes of verifying the identity of the person fingerprinted and obtaining records of his or her criminal arrests and convictions.

(d) Every entity shall maintain, or shall contract with another person to maintain, the most recent background information obtained on a caregiver under par. (b). The information shall be

made available for inspection by authorized persons, as defined by the department by rule.

(3)(a) Every 4 years or at any time within that period that the department, a county department, a child welfare agency or a school board considers appropriate, the department, county department, child welfare agency or school board shall request the information specified in sub. (2)(am)1. to 5. for all persons who are licensed, certified or contracted to operate an entity, for all persons who are nonclient residents of an entity and for all persons under 18 years of age, but not under 12 years of age, who are caregivers of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13(4) or of a day care provider that is certified under s. 48.651.

(b) Every 4 years or at any time within that period that an entity considers appropriate, the entity shall request the information specified in sub. (2)(b)1.a. to e. for all persons who are caregivers of the entity other than persons under 18 years of age, but not under 12 years of age, who are caregivers of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13(14) or of a day care provider that is certified under s. 48.651.

(3m) Notwithstanding subs. (2)(b)1. and (3)(b), if the department, a county department, a child welfare agency or a school board has obtained the information required under sub. (2)(am) or (3)(a) with respect to a person who is a caregiver specified in sub. (1)(ag)1.b. and that person is also an employee, contractor or nonclient resident of an entity, the entity is not required to obtain the information specified in sub. (2)(b)1. or (3)(b) with respect to that person.

(4) An entity that violates sub. (2), (3) or (4m)(b) may be required to forfeit not more than \$1,000 and may be subject to other sanctions specified by the department by rule.

(4m)(a) Notwithstanding s. 111.335, and except as provided in par. (ad) and sub. (5), the department may not license, or continue or renew the license of, a person to operate an entity, a county department may not certify a day care provider under s. 48.651, a county department or a child welfare agency may not license, or renew the license of, a foster home or treatment foster home under s. 48.62 and a school board may not contract with a person under s. 120.13(14), if the department, county department, child welfare agency or school board knows or should have known any of the following:

1. That the person has been convicted of a serious crime or, if the person is an applicant for issuance or continuation of a license to operate a day care center or for initial certification under s. 48.651 or for renewal of that certification or if the person is proposing to contract with a school board under s. 120.13(14) or to renew a contract under that subsection, that the person has been convicted of a serious crime or adjudicated delinquent on or after his or her 12th birthday for committing a serious crime.

3. That a unit of government or a state agency, as defined in s. 16.61(2)(d), has made a finding that the person has abused or neglected any client or misappropriated the property of any client.

4. That a determination has been made under s. 48.981(3)(c)4. that the person has abused or neglected a child.

5. That, in the case of a position for which the person must be credentialed by the department of regulation and licensing, the person's credential is not current or is limited so as to restrict the person from providing adequate care to a client.

(ad) The department, a county department or a child welfare agency may license a foster home or treatment foster home under s. 48.62, a county department may certify a day care provider under s. 48.651 and a school board may contract with a person under s. 120.13(14), conditioned on the receipt of the information specified in sub. (2)(am) indicating that the person is not ineligible to be licensed, certified or contracted with for a reason specified in par. (a)1. to 5.

(b) Notwithstanding s. 111.335, and except as provided in sub. (5), an entity may not employ or contract with a caregiver or permit a nonclient resident to reside at the entity if the entity knows or should have known any of the following:

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1. That the person has been convicted of a serious crime or, if the person is a caregiver or nonclient resident of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13(14) or of a day care provider that is certified under s. 48.651, that the person has been convicted of a serious crime or adjudicated delinquent on or after his or her 12th birthday for committing a serious crime.

3. That a unit of government or a state agency, as defined in s. 16.61(2)(d), has made a finding that the person has abused or neglected any client or misappropriated the property of any client.

4. That a determination has been made under s. 48.981(3)(c)4. that the person has abused or neglected a child.

5. That, in the case of a position for which the person must be credentialed by the department of regulation and licensing, the person's credential is not current or is limited so as to restrict the person from providing adequate care to a client.

(c) If the background information form completed by a person under sub. (6)(am) indicates that the person is not ineligible to be employed or contracted with for a reason specified in par. (b) 1. to 5., an entity may employ or contract with the person for not more than 60 days pending the receipt of the information sought under sub. (2)(am) 1. to 5. or (b)1. If the background information form completed by a person under sub. (6)(am) indicates that the person is not ineligible to be permitted to reside at an entity for a reason specified in par. (b)1. to 5. and if an entity otherwise has no reason to believe that the person is ineligible to be permitted to reside at an entity for any of those reasons, the entity may permit the person to reside at the entity for not more than 60 days pending receipt of the information sought under sub. (2)(am). An entity shall provide supervision for a person who is employed, contracted with or permitted to reside as permitted under this paragraph.

(5)(a) The department may license to operate an entity, a county department may certify under s. 48.651, a county department or a child welfare agency may license under s. 48.62 and a school board may contract with under s. 120.13 (14) a person who otherwise may not be licensed, certified or contracted with for a reason specified in sub. (4m) (a) 1. to 5., and an entity may employ, contract with or permit to reside at the entity a person who otherwise may not be employed, contracted with or permitted to reside at the entity for a reason specified in sub. (4m) (b) 1. to 5., if the person demonstrates to the department, the county department, the child welfare agency or the school board or, in the case of an entity that is located within the boundaries of a reservation, to the person or body designated by the tribe under sub. (5d) (a) 3., by clear and convincing evidence and in accordance with procedures established by the department by rule or by the tribe that he or she has been rehabilitated.

(bm) For purposes of licensing a foster home or treatment foster home, no person who has been convicted of any of the following offenses may be permitted to demonstrate that he or she has been rehabilitated:

1. An offense under ch. 948 that is a felony.

2. A violation of s. 940.19(3), 1999 stats., or of s. 940.19(2), (4), (5) or (6) or 940.20(1) or (1m), if the victim is the spouse of the person.

3. A violation of s. 943.23(1m) or (1r), 1999 stats., or of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.21, 940.225(1), (2) or (3), 940.23, 940.305, 940.31, 941.20(2) or (3), 941.21, 943.10(2), 943.23 (1g) or 943.32(2).

4. A violation of s. 940.19(3), 1999 stats., or of s. 125.075(1), 125.085(3)(a)2., 125.105(2)(b), 125.66 (3), 125.68 (12), 940.09, 940.19(2), (4), (5), or (6), 940.20, 940.203, 940.205, 940.207, or 940.25, a violation of s. 346.63(1), (2), (5), or (6) that is a felony under s. 346.65(2)(e) or (f), (2j) (d), or (3m), or an offense under ch. 961 that is a felony, if committed not more than 5 years before the date of the investigation under sub. (2)(am).

(5c)(a) Any person who is permitted but fails under sub. (5)(a) to demonstrate to the department or a child welfare agency that he or she has been rehabilitated may appeal to the secretary of health and family services or his or her designee. Any person who is adversely affected by a decision of the secretary or his or her designee under this paragraph has a right to a contested case hearing under ch. 227.

(b) Any person who is permitted but fails under sub. (5)(a) to demonstrate to the county department that he or she has been

rehabilitated may appeal to the director of the county department or his or her designee. Any person who is adversely affected by a decision of the director or his or her designee under this paragraph has a right to appeal the decision under ch. 68.

(c) Any person who is permitted but fails under sub. (5)(a) to demonstrate to the school board that he or she has been rehabilitated may appeal to the state superintendent of public instruction or his or her designee. Any person who is adversely affected by a decision of the state superintendent or his or her designee under this paragraph has a right to a contested case hearing under ch. 227.

(5d) (a) Any tribe that chooses to conduct rehabilitation reviews under sub. (5) shall submit to the department a rehabilitation review plan that includes all of the following:

1. The criteria to be used to determine if a person has been rehabilitated.

2. The title of the person or body designated by the tribe to whom a request for review must be made.

3. The title of the person or body designated by the tribe to determine whether a person has been rehabilitated.

3m. The title of the person or body, designated by the tribe, to whom a person may appeal an adverse decision made by the person specified under subd. 3. and whether the tribe provides any further rights to appeal.

4. The manner in which the tribe will submit information relating to a rehabilitation review to the department so that the department may include that information in its report to the legislature required under sub. (5g).

5. A copy of the form to be used to request a review and a copy of the form on which a written decision is to be made regarding whether a person has demonstrated rehabilitation.

(b) If, within 90 days after receiving the plan, the department does not disapprove the plan, the plan shall be considered approved. If, within 90 days after receiving the plan, the department disapproves the plan, the department shall provide notice of that disapproval to the tribe in writing, together with the reasons for the disapproval. The department may not disapprove a plan unless the department finds that the plan is not rationally related to the protection of clients. If the department disapproves the plan, the tribe may, within 30 days after receiving notice of the disapproval, request that the secretary review the department's decision. A final decision under this paragraph is not subject to further review under ch. 227.

(5g) Beginning on January 1 1999, and annually thereafter, the department shall submit a report to the legislature under s. 13.172(2) that specifies the number of persons in the previous year who have requested to demonstrate that they have been rehabilitated under sub. (5)(a), the number of persons who successfully demonstrated that they have been rehabilitated under sub. (5)(a) and the reasons for the success or failure of a person who has attempted to demonstrate that he or she has been rehabilitated.

(5m) Notwithstanding s. 111.335, the department may refuse to license a person to operate an entity, a county department or a child welfare agency may refuse to license a foster home or treatment foster home under s. 48.62, and an entity may refuse to employ or contract with a caregiver or permit a nonclient resident to reside at the entity if the person has been convicted of an offense that is not a serious crime, but that is, in the estimation of the department, county department, child welfare agency or entity, substantially related to the care of a client. Notwithstanding s. 111.335, the department may refuse to license a person to operate a day care center, a county department may refuse to certify a day care provider under s. 48.651, a school board may refuse to contract with a person under s. 120.13(14), a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13(14) and a day care provider that is certified under s. 48.651 may refuse to employ or contract with a caregiver or permit a nonclient resident to reside at the day care center or day care provider if the person has been convicted of or adjudicated delinquent on or after his or her

12th birthday for an offense that is not a serious crime, but that is, in the estimation of the department, county department, school board, day care center or day care provider, substantially related to the care of a client.

(6)(a) The department shall require any person who applies for issuance, continuation or renewal of a license to operate an entity, a county department shall require any day care provider who applies for initial certification under s. 48.651 or for renewal of that certification, a county department or a child welfare agency shall require any person who applies for issuance or renewal of a license to operate a foster home or treatment foster home under s. 48.62 and a school board shall require any person who proposes to contract with the school board under s. 120.13(14) or to renew a contract under that subsection, to complete a background information form that is provided by the department.

(am) Every 4 years an entity shall require all of its caregivers and nonclient residents to complete a background information form that is provided to the entity by the department.

(b)1. For caregivers who are licensed by the department, for persons under 18 years of age, but not under 12 years of age, who are caregivers of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13(14) or of a day care provider that is certified under s. 48.651, for persons who are nonclient residents of an entity that is licensed by the department, and for other persons specified by the department by rule, the entity shall send the background information form to the department.

2. For caregivers who are licensed or certified by a county department, for persons who are nonclient residents of an entity that is licensed or certified by a county department and for other persons specified by the department by rule, the entity shall send the background information form to the county department.

3. For caregivers who are licensed by a child welfare agency, for persons who are nonclient residents of an entity that is licensed by a child welfare agency and for other persons specified by the department by rule, the entity shall send the background information form to the child welfare agency.

4. For caregivers who are contracted with by a school board, for persons who are nonclient residents of an entity that is contracted with by a school board and for other persons specified by the department by rule, the entity shall send the background information form to the school board.

(c) A person who provides false information on a background information form required under this subsection may be required to forfeit not more than \$1,000 and may be subject to other sanctions specified by the department by rule.

(7) The department shall do all of the following:

(c) Conduct throughout the state periodic training sessions that cover criminal background investigations; reporting and investigating misappropriation of property or abuse or neglect of a client; and any other material that will better enable entities to comply with the requirements of this section.

(d) Provide a background information form that requires the person completing the form to include his or her date of birth on the form.

(8) The department, a county department, a child welfare agency or a school board may charge a fee for obtaining the information required under sub. (2)(am) or (3)(a) or for providing information to an entity to enable the entity to comply with sub. (2)(b)1. or (3)(b). The fee may not exceed the reasonable cost of obtaining the information. No fee may be charged to a nurse's assistant, as defined in s. 146.40(1)(d), for obtaining or maintaining information if to do so would be inconsistent with federal law.

**48.69 PROBATIONARY LICENSES.** Except as provided under s. 48.715(6) and (7), if any child welfare agency, shelter care facility, group home or day care center that has not been previously issued a license under s. 48.66(1)(a) applies for a license, meets the minimum requirements for a license established under s. 48.67 and pays the applicable fee referred to in s. 48.68(1), the department shall issue a probationary license to that child welfare agency, shelter care facility, group home or day care center. A probationary license is valid for up to 6 months after the date of issuance unless renewed under this section or suspended or revoked under s. 48.715. Before a probationary license expires, the department shall inspect the child welfare agency, shelter care facility, group home or

day care center holding the probationary license and, except as provided under s. 48.715(6) and (7), if the child welfare agency, shelter care facility, group home or day care center meets the minimum requirements for a license established under s. 48.67, the department shall issue a license under s. 48.66(1)(a). A probationary license issued under this section may be renewed for one 6-month period.

#### **48.70 PROVISIONS OF LICENSES.**

(1) General. Each license shall state the name of the person licensed, the premises included under the license, the maximum number of children who can be received and their age and sex and such additional information and special conditions as the department may prescribe.

(2) Special Provisions for Child Welfare Agency Licenses.

A license to a child welfare agency shall also specify the kind of child welfare work the agency is authorized to undertake, whether the agency may accept guardianship of children, whether the agency may place children in foster homes or treatment foster homes, and if so, the area the agency is equipped to serve.

(4) Special Provisions for County Departments. Licenses to county departments shall specify whether the county department may accept guardianship of children and place children for adoption.

#### **48.745 FORMAL COMPLAINTS REGARDING CHILD WELFARE AGENCIES AND GROUP HOMES.**

(1) If a complaint is received by a child welfare agency operating a residential care center for children and youth or by a group home, the licensee shall attempt to resolve the complaint informally. Failing such resolution, the licensee shall inform the complaining party of the procedure for filing a formal complaint under this section.

(2) Any individual may file a formal complaint under this section regarding the general operation of a residential care center for children and youth or group home and shall not be subject to reprisals for doing so. All formal complaints regarding residential care centers for children and youth and group homes shall be filed with the county department on forms supplied by the county department unless the county department designates the department to receive formal complaints. The county department shall investigate or cause to be investigated each formal complaint. Records of the results of each investigation and the disposition of each formal complaint shall be kept by the county department and filed with the subunit of the department that licenses residential care centers for children and youth and group homes.

(3) Upon receipt of a formal complaint, the county department may investigate the premises and records and question the licensee, staff, and residents of the residential care center for children and youth or group home involved. The county department shall attempt to resolve the situation through negotiation and other appropriate means.

(4) If no resolution is reached, the county department shall forward the formal complaint, results of the investigation and any other pertinent information to the unit within the department which is empowered to take further action under this chapter against the facility. The unit shall review the complaint and may conduct further investigation, take enforcement action under this chapter or dismiss the complaint. The department shall notify the complainant in writing of the final disposition of the complaint and the reasons therefore. If the complaint is dismissed, the complainant is entitled to an administrative hearing conducted by the department to determine the reasonableness of the dismissal.

(5) If the county department designates the department to receive formal complaints, the subunit under s. 48.03(22)(c) shall receive the complaints and the department shall have all the powers and duties granted to the county department in this section.

#### **48.75 FOSTER HOMES AND TREATMENT FOSTER HOMES LICENSED BY PUBLIC LICENSING AGENCIES AND BY CHILD WELFARE AGENCIES.**

**(1b)** In this section, "public licensing agency" means a county department or, in a county having a population of 500,000 or more, the department.

**(1d)** Child welfare agencies, if licensed to do so by the department, and public licensing agencies may license foster homes and treatment foster homes under the rules promulgated by the department under s. 48.67 governing the licensing of foster homes and treatment foster homes. A foster home or treatment foster home license shall be issued for a term not to exceed 2 years from the date of issuance, is not transferable and may be revoked by the child welfare agency or by the public licensing agency because the licensee has substantially and intentionally violated any provision of this chapter or of the rules of the department promulgated pursuant to s. 48.67 or because the licensee fails to meet the minimum requirements for a license. The licensee shall be given written notice of any revocation and the grounds therefor.

**(1g)(a)** A public licensing agency may license a foster home only if the foster home is located in the county of the public licensing agency, except that a public licensing agency may license a foster home located in another county if any of the following applies:

1. The person who will be licensed to operate the foster home is a relative, as defined in s. 48.02(15) or as specified in s. 49.19(1)(a)2. a., or a guardian of the child who will be placed in the foster home.

2. A foster parent licensed by the public licensing agency moves to the other county with a child who has been placed in the foster parent's home and the license will allow the foster parent to continue to care for that child.

3. The county of the public licensing agency issuing the license and the county in which the foster home is located are contiguous.

4. The county of the public licensing agency issuing the license has a population of 500,000 or more and the placement is for adoption under s. 48.833, 48.835 or 48.837.

5. The public licensing agency of the county in which the prospective foster home is located requests the public licensing agency of another county to license the foster home.

(b) A license issued under this subsection shall specifically identify each child to be placed in the foster home and shall terminate on the removal of all of those children from the foster home.

(c) No license may be issued under par. (a)1., 2. or 3. unless the public licensing agency issuing the license has notified the public licensing agency of the county in which the foster home will be located of its intent to issue the license and the 2 public licensing agencies have entered into a written agreement under this paragraph. A public licensing agency is not required to enter into any agreement under this paragraph allowing the public licensing agency of another county to license a foster home within its jurisdiction. The written agreement shall include all of the following:

1. A statement that the public licensing agency issuing the license is responsible for providing services to the child who is placed in the foster home, as specified in the agreement.

2. A statement that the public licensing agency issuing the license is responsible for the costs of the placement and any related costs, as specified in the agreement.

3. A description of the procedures to be followed in providing emergency services to the child who is placed in the foster home and to the foster parent, as specified in the agreement.

(d) If the public licensing agency issuing a license under par. (a)1., 2. or 3. violates the agreement under par. (c), the public licensing agency of the county in which the foster home is located may terminate the agreement and, subject to ss. 48.357 and 48.64, require the public licensing agency that issued the license to remove the child from the foster home within 30 days after receipt, by the public licensing agency that issued the license, of notification of the termination of the agreement.

**(1m)** Each child welfare agency and public licensing agency shall provide the subunit of the department that administers s. 48.685 with information about each person who is denied a license for a reason specified in s. 48.685(4m)(a)1. to 5.

**(1r)** At the time of initial licensure and license renewal, the child welfare agency or public licensing agency issuing a license under sub. (1d) or (1g) shall provide the licensee with written information relating to the age-related monthly foster care rates and supplemental payments specified in s. 48.62(4), including payment

amounts, eligibility requirements for supplemental payments and the procedures for applying for supplemental payments.

**(2)** Any foster home or treatment foster home applicant or licensee of a public licensing agency or a child welfare agency may, if aggrieved by the failure to issue or renew its license or by revocation of its license, appeal as provided in s. 48.72.

#### 48.78 CONFIDENTIALITY OF RECORDS.

**(1)** In this section, unless otherwise qualified, "agency" means the department, a county department, a licensed child welfare agency, or a licensed day care center.

**(2)(a)** No agency may make available for inspection or disclose the contents of any record kept or information received about an individual in its care or legal custody, except as provided under s. 48.371, 48.38(5)(b) or (d) or (5m)(d), 48.432, 48.433, 48.93, 48.981(7), 938.51, or 938.78 or by order of the court.

(ag) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the request of the parent, guardian, or legal custodian of the child who is the subject of the record or upon the request of the child, if 14 years of age or over, to the parent, guardian, legal custodian, or child, unless the agency determines that inspection of the record by the child, parent, guardian, or legal custodian would result in imminent danger to anyone.

(aj) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the request of a parent, guardian, or legal custodian of a child expectant mother of an unborn child who is the subject of the record, upon the request of an expectant mother of an unborn child who is the subject of the record, if 14 years of age or over, or upon the request of an unborn child by the unborn child's guardian ad litem to the parent, guardian, legal custodian, expectant mother, or unborn child by the unborn child's guardian ad litem, unless the agency determines that inspection of the record by the parent, guardian, legal custodian, expectant mother, or unborn child by the unborn child's guardian ad litem would result in imminent danger to anyone.

(am) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the written permission of the parent, guardian, or legal custodian of the child who is the subject of the record or upon the written permission of the child, if 14 years of age or over, to the person named in the permission if the parent, guardian, legal custodian, or child specifically identifies the record in the written permission, unless the agency determines that inspection of the record by the person named in the permission would result in imminent danger to anyone.

(ap) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the written permission of the parent, guardian, or legal custodian of a child expectant mother of an unborn child who is the subject of the record, or of an expectant mother of an unborn child who is the subject of the record, if 14 years of age or over, and of the unborn child by the unborn child's guardian ad litem, to the person named in the permission if the parent, guardian, legal custodian, or expectant mother, and unborn child by the unborn child's guardian ad litem, specifically identify the record in the written permission, unless the agency determines that inspection of the record by the person named in the permission would result in imminent danger to anyone.

(b) Paragraph (a) does not apply to the confidential exchange of information between an agency and another social welfare agency, a law enforcement agency, a public school or a private school regarding an individual in the care or legal custody of the agency. A social welfare agency that obtains information under this paragraph shall keep the information confidential as required under this section and s. 938.78. A law enforcement agency that obtains information under this paragraph shall keep the information confidential as required under ss. 48.396(1) and 938.396(1). A public school that obtains information under this paragraph shall keep the

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information confidential as required under s. 118.125 and a private school that obtains information under this paragraph shall keep the information confidential in the same manner as is required of a public school under s. 118.125.

(c) Paragraph (a) does not prohibit the department or a county department from using in the media a picture or description of a child in the guardianship of the department or a county department for the purpose of finding adoptive parents for that child.

(d) Paragraph (a) does not prohibit the department of health and family services or a county department from disclosing information about an individual formerly in the legal custody or under the supervision of that department under s. 48.34(4m), 1993 stats., or formerly under the supervision of that department or county department under s. 48.34(4n), 1993 stats., to the department of corrections, if the individual is at the time of disclosure any of the following:

1. The subject of a presentence investigation under s. 972.15.
2. Under sentence to the Wisconsin state prisons under s. 973.15.
3. Subject to an order under s. 48.366 and placed in a state prison under s. 48.366(8).
4. On probation to the department of corrections under s. 973.09.
5. On parole under s. 302.11 or ch. 304 or on extended supervision under s. 302.113 or 302.114.

(g) Paragraph (a) does not prohibit an agency from disclosing information about an individual in its care or legal custody on the written request of the department of regulation and licensing or of any interested examining board or affiliated credentialing board in that department for use in any investigation or proceeding relating to any alleged misconduct by any person who is credentialed or who is seeking credentialing under ch. 448, 455 or 457. Unless authorized by an order of the court, the department of regulation and licensing and any examining board or affiliated credentialing board in that department shall keep confidential any information obtained under this paragraph and may not disclose the name of or any other identifying information about the individual who is the subject of the information disclosed, except to the extent that redisclosure of that information is necessary for the conduct of the investigation or proceeding for which that information was obtained.

(h) Paragraph (a) does not prohibit the department, a county department, or a licensed child welfare agency from entering the content of any record kept or information received about an individual in its care or legal custody into the statewide automated child welfare information system established under s. 46.03(7)(g). Paragraph (a) also does not prohibit a county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437, the department of health and family services, the department of corrections, or any other organization that has entered into an information sharing and access agreement with one of those county departments or departments and that has been approved for access to the statewide automated child welfare information system by the department of health and family services from having access to information concerning a client of that county department, department, or organization under this chapter or ch. 51 or 938 that is maintained in the statewide automated child welfare information system, if necessary to enable the county department, department, or organization to perform its duties under this chapter or ch. 51 or 938 or to coordinate the delivery of services under this chapter or ch. 51 or 938 to the client. Before entering any information about an individual into the statewide automated child welfare information system, the department, county department, or licensed child welfare agency entering the information shall notify the individual that the information entered may be disclosed as provided in this paragraph.

**48.825 ADVERTISING RELATED TO ADOPTION.**

(1) In this section:

- (a) "Advertise" means to communicate by any public medium that originates within this state, including by newspaper, periodical, telephone book listing, outdoor advertising sign, radio or television.
- (b) "Another jurisdiction" means a state of the United States other than Wisconsin, the District of Columbia, the Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of the United States or a federally recognized American Indian tribe or band.

(2) Except as provided in sub. (3), no person may do any of the following:

- (a) Advertise for the purpose of finding a child to adopt.
- (b) Advertise that the person will find an adoptive home for a child or arrange for or assist in the adoption or adoptive placement of a child.

(c) Advertise that the person will place a child for adoption.

(3) This section does not apply to any of the following:

- (a) The department, a county department or a child welfare agency licensed under s. 48.60 to place children for adoption.
- (b) An individual or agency providing adoption information under s. 48.55.
- (d) An individual who has received a favorable recommendation regarding his or her fitness to be an adoptive parent in this state from the department, a county department or a child welfare agency licensed under s. 48.60 or in another jurisdiction from an entity authorized by that jurisdiction to conduct studies of potential adoptive homes.
- (e) An individual seeking to place his or her child for adoption.
- (4) Nothing in this section prohibits an attorney licensed to practice in this state from advertising his or her availability to practice or provide services relating to the adoption of children.
- (5) Any person who violates sub. (2) may be fined not more than \$10,000 or imprisoned not more than 9 months or both.

**48.837 PLACEMENT OF CHILDREN WITH NONRELATIVES FOR ADOPTION.**

(1) Adoptive Placement. A parent having custody of a child and the proposed adoptive parent or parents of the child may petition the court for placement of the child for adoption in the home of a person who is not a relative of the child if the home is licensed as a foster home or treatment foster home under s. 48.62.

(2) Petition for Placement. The petition for adoptive placement shall be verified and shall allege all of the following:

- (a) The name, address and age of the child or the expected birth date of the child.
- (b) The name, address and age of the birth parents and the proposed adoptive parents.
- (c) The identity of any person or agency which solicited, negotiated or arranged the placement of the child with the proposed adoptive parents.

(3) Petition for Termination of Parental Rights Required. The petition under sub. (2) shall be filed with a petition under s. 48.42 for the voluntary consent to the termination of any existing rights of the petitioning parent or parents.

(4) Responsibilities of Court. On the filing of the petitions under this section the court:

- (a) Shall hold a hearing within 30 days after the date of filing of the petitions, except that the hearing may not be held before the birth of the child.
- (b) Shall appoint counsel or guardians ad litem when required under s. 48.23.
- (c) Shall order the department or a county department under s. 48.57(1)(e) or (hm) to investigate the proposed adoptive placement, to interview each petitioner, to provide counseling if requested and to report its recommendation to the court at least 5 days before the hearing on the petition. If a licensed child welfare agency has investigated the proposed adoptive placement and interviewed the petitioners, the court may accept a report and recommendation from the child welfare agency in place of the court-ordered report required under this paragraph.

(d) May, at the request of a petitioning parent, or on its own motion after ordering the child taken into custody under s. 48.19(1)(c), order the department or a county department under s. 48.57(1)(e) or (hm) to place the child, pending the hearing on the petition, in any home licensed under s. 48.62 except the home of the proposed adoptive parents or a relative of the proposed adoptive parents.



(e) Shall, before hearing the petitions under subs. (2) and (3), ascertain whether the child's paternity has been acknowledged under s. 767.62(1) or a substantially similar law of another state or adjudicated in this state or another jurisdiction. If any person has filed a declaration of paternal interest under s. 48.025, the court shall determine the rights of that person. If the child's paternity has not been acknowledged or adjudicated and if no person has filed a declaration under s. 48.025, the court shall attempt to ascertain the paternity of the child. The court may not proceed with the hearing on the petitions under this section unless the parental rights of the nonpetitioning parent, whether known or unknown, have been terminated.

(5) Attendance at Hearing. The child, if he or she is 12 years of age or over, and each petitioner shall attend the hearing on the petition under sub. (2). The child, if he or she is 12 years of age or over, and each parent having custody of the child shall attend the hearing on the petition under sub. (3). If the parent who has custody of the child consents and the court approves, the proposed adoptive parents may be present at the hearing on the petition under sub. (3). The court may, for good cause, waive the requirement that the child attend either of the hearings.

(6) Order of Hearings. (a) The court shall hold the hearing on the petition under sub. (2) before the hearing on the petition required under sub. (3).

(b) At the beginning of the hearing held under sub. (2), the court shall review the report that is submitted under s. 48.913(6). The court shall determine whether any payments or the conditions specified in any agreement to make payments are coercive to the birth parent of the child or to an alleged or presumed father of the child or are impermissible under s. 48.913(4). Making any payment to or on behalf of the birth parent of the child, an alleged or presumed father of the child or the child conditional in any part upon transfer or surrender of the child or the termination of parental rights or the finalization of the adoption creates a rebuttable presumption of coercion. Upon a finding of coercion, the court shall dismiss the petitions under subs. (2) and (3) or amend the agreement to delete any coercive conditions, if the parties agree to the amendment. Upon a finding that payments which are impermissible under s. 48.913(4) have been made, the court may dismiss the petition and may refer the matter to the district attorney for prosecution under s. 948.24(1).

(c) After the hearing on the petition under sub. (2), the court shall make findings on the allegations of the petition and the report ordered under sub. (4)(c) and make a conclusion as to whether placement in the home is in the best interest of the child.

(d) If the proposed placement is approved, the court shall proceed immediately to a hearing on the petition required under sub.

(3). If the parental rights of the parent are terminated, the court shall order the child placed with the proposed adoptive parent or parents and appoint as guardian of the child the department, a county department under s. 48.57(1)(e) or (hm) or a child welfare agency licensed to accept guardianship under s. 48.61(5).

(7) Investigation and Care Costs. The proposed adoptive parents shall pay the cost of any investigation ordered under sub. (4)(c), according to a fee schedule established by the department based on ability to pay, and shall also, if the adoption is completed, pay the cost of any care provided for the child under sub. (4)(d).

(8) Attorney Representation. The same attorney may not represent the adoptive parents and the birth mother or birth father.

#### 48.88 NOTICE OF HEARING; INVESTIGATION.

(1) In this section, unless otherwise qualified, "agency" means any public or private entity except an individual.

(1m) Upon the filing of a petition for adoption, the court shall schedule a hearing within 90 days of the filing. Notice of the hearing shall be mailed, not later than 3 days from the date of the order for hearing and investigation, to the guardian of the child, if any, to the agency making the investigation under sub. (2), to the department when its recommendation is required by s. 48.89 and to the child if the child is 12 years of age or over.

(2)(a) Except as provided under par. (c), when a petition to adopt a child is filed, the court shall order an investigation to determine whether the child is a proper subject for adoption and whether the petitioner's home is suitable for the child. The court shall order one of the following to conduct the investigation:

1. If an agency has guardianship of the child, the guardianship agency, unless the agency has already filed its recommendation under s. 48.85 and has filed with the recommendation a report of an investigation as required under this paragraph.

2. If no agency has guardianship of the child and a relative other than a stepparent has filed the petition for adoption, the department, a county department under s. 48.57(1)(e) or (hm) or a licensed child welfare agency.

4. If the child is a citizen of a foreign jurisdiction and is under the guardianship of an individual, the agency which conducted the home study required under federal law prior to the child's entry into the United States.

(b) The agency making the investigation shall file its report with the court at least 10 days before the hearing unless the time is reduced for good cause shown by the petitioner. The report shall be part of the record of the proceedings.

(c) If a stepparent has filed a petition for adoption and no agency has guardianship of the child, the court shall order the department, in a county having a population of 500,000 or more, or a county department or, with the consent of the department in a county having a population of less than 500,000 or a licensed child welfare agency, order the department or the child welfare agency to conduct a screening, consisting of no more than one interview with the petitioner and a check of the petitioner's background through public records, including records maintained by the department or any county department under s. 48.981. The department, county department or child welfare agency that conducts the screening shall file a report of the screening with the court within 30 days. After reviewing the report, the court may proceed to act on the petition, may order the department in a county having a population of 500,000 or more or the county department to conduct an investigation as described under par. (a)(intro.) or may order the department in a county having a population of less than 500,000 or a licensed child welfare agency to make the investigation if the department or child welfare agency consents.

(3) If the report of the investigation is unfavorable or if it discloses a situation which, in the opinion of the court, raises a serious question as to the suitability of the proposed adoption, the court may appoint a guardian ad litem for the minor whose adoption is proposed. The guardian ad litem may have witnesses subpoenaed and present proof at the hearing.

#### 48.90 FILING OF ADOPTION PETITION; PREADoption RESIDENCE.

(1) A petition for adoption may be filed at any time if:

(a) One of the petitioners is a relative of the child by blood or by adoption, excluding parents whose parental rights have been terminated and persons whose relationship to the child is derived through such parents.

(b) The petitioner is the child's stepparent.

(c) The petition is accompanied by a written approval of the guardian.

(d) The petitioner is the proposed adoptive parent with whom the child has been placed under s. 48.839.

(2) Except as provided under sub. (1), no petition for adoption may be filed unless the child has been in the home of the petitioners for 6 months or more.

(3) No petition for adoption may be filed unless the petitioners have complied with all applicable provisions of this chapter relating to adoptive placements.

#### 48.91 HEARING; ORDER.

(1) The hearing may be in chambers unless an interested person objects. The petitioner and the minor to be adopted, if 14 or older, shall attend unless the court orders otherwise.

(2) In an adoption proceeding for a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60, the court shall establish whether the rights of any persons who have filed declarations of paternal interest under s. 48.025 have been determined or whether paternity has been acknowledged under s. 767.62(1) or a substantially similar law of another state or adjudicated in this state or in

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another jurisdiction. If the court finds that no such determination has been made, the court shall proceed, prior to any action on the petition for adoption, to attempt to ascertain the paternity of the child and the rights of any person who has filed a declaration under s. 48.025.

(3) If after the hearing and a study of the report required by s. 48.88 and the recommendation required by s. 48.841 or 48.89, the court is satisfied that the necessary consents or recommendations have been filed and that the adoption is in the best interests of the child, the court shall make an order granting the adoption. The order may change the name of the minor to that requested by petitioners.

**48.93 RECORDS CLOSED.**

(1) In this section, "adoptee" has the meaning given in s. 48.432(1)(a).

(1d) All records and papers pertaining to an adoption proceeding shall be kept in a separate locked file and may not be disclosed except under sub. (1g) or (1r), s. 46.03(29), 48.432, 48.433, 48.434, 48.48(17)(a)9. or 48.57(1)(j), or by order of the court for good cause shown.

(1g) At the time a court enters an order granting an adoption, it shall provide the adoptive parents with a copy of the child's medical record under s. 48.425(1)(am) or with any information provided to the court under s. 48.422(9) or 48.425(2), after deleting the names and addresses of the child's birth parents and the identity of any provider of health care to the child or the child's birth parents.

(1r) Any agency which has placed a child for adoption shall, at the request of an adoptive parent or of the adoptee, after he or she has reached age 18, provide the requester without charge, except for the actual cost of reproduction, with medical or genetic information about the adoptee or about the adoptee's birth parents which it has on file and with nonidentifying social history information about the adoptee's family which it has on file, after deleting the names and addresses of the birth parents and any provider of health care to the adoptee or the adoptee's birth parents. The agency may charge a requester a fee for the cost of verifying, purging, summarizing, copying and mailing the information according to the fee schedule established by the department under s. 48.432(3)(c). The fee may not be more than \$150 and may be waived by the agency.

(2) All correspondence and papers, relating to the investigation, which are not a part of the court record, except those in the custody of agencies authorized to place children for adoption shall be transferred to the department and placed in its closed files.

**48.98 INTERSTATE PLACEMENT OF CHILDREN.**

(1) No person may bring a child into this state or send a child out of this state for the purpose of placing the child in foster care or treatment foster care or for the purpose of adoption without a certificate from the department that the home is suitable for the child.

(2)(a) Any person, except a county department or licensed child welfare agency, who brings a child into this state for the purpose of placing the child in a foster home or treatment foster home shall, before the child's arrival in this state, file with the department a \$1,000 noncancelable bond in favor of this state, furnished by a surety company licensed to do business in this state. The condition of the bond shall be that the child will not become dependent on public funds for his or her primary support before the child reaches age 18 or is adopted.

(b) By filing the bond required under par. (a), the person filing the bond and the surety submit to the jurisdiction of the court in the county in which the person resides for purposes of liability on the bond, and appoint the clerk of the court as their agent upon whom any papers affecting their bond liability may be served.

(c) If upon affidavit of the department it appears to the court that the condition of the bond has been violated, the court shall order the person who filed the bond and the surety to show cause why judgment on the bond should not be entered for the department. If neither the person nor the surety appears for the hearing on the order to show cause, or if the court concludes after the hearing that the condition of the bond has been violated, the court shall enter judgment on the bond for the department against the person who filed the bond and the surety.

(d) The department shall periodically bill the person who filed the bond and the surety under s. 46.03(18)(b) or 46.10 for the cost of care and maintenance of the child until the child is adopted or becomes age 18, whichever is earlier. The guardian and surety shall also be liable under the bond for costs incurred by the department in enforcing the bond.

(e) The department may waive the bond requirement under par. (a).

(3) The person bringing or sending the child into or out of this state shall report to the department, at least once each year and at any other time required by the department, concerning the location and well-being of the child, until the child is 18 years of age or is adopted.

(4)(a) This section applies only to interstate placements of children which are not governed by s. 48.988.

(b) Section 48.839 governs the placement of children who are not U.S. citizens and not under agency guardianship who are brought into this state from a foreign jurisdiction for the purpose of adoption.

(5) The department may promulgate all rules necessary for the enforcement of this section.

**48.981 ABUSED OR NEGLECTED CHILDREN AND ABUSED UNBORN CHILDREN.**

(1) Definitions. In this section:

(ag) "Agency" means a county department, the department in a county having a population of 500,000 or more or a licensed child welfare agency under contract with a county department or the department in a county having a population of 500,000 or more to perform investigations under this section.

(am) "Caregiver" means, with respect to a child who is the victim or alleged victim of abuse or neglect or who is threatened with abuse or neglect, any of the following persons:

1. The child's parent, grandparent, greatgrandparent, stepparent, brother, sister, stepbrother, stepsister, half brother, or half sister.

2. The child's guardian.

3. The child's legal custodian.

4. A person who resides or has resided regularly or intermittently in the same dwelling as the child.

5. An employee of a residential facility or residential care center for children and youth in which the child was or is placed.

6. A person who provides or has provided care for the child in or outside of the child's home.

7. Any other person who exercises or has exercised temporary or permanent control over the child or who temporarily or permanently supervises or has supervised the child.

8. Any relative of the child other than a relative specified in subd. 1.

(b) "Community placement" means probation; extended supervision; parole; aftercare; conditional transfer into the community under s. 51.35(1); conditional transfer or discharge under s. 51.37(9); placement in a Type 2 child caring institution or a Type 2 secured correctional facility authorized under s. 938.539(5); conditional release under s. 971.17; supervised release under s. 980.06 or 980.08; participation in the community residential confinement program under s. 301.046, the halfway house program under s. 301.0465, the intensive sanctions program under s. 301.048, the corrective sanctions program under s. 938.533, the intensive supervision program under s. 938.534 or the serious juvenile offender program under s. 938.538; or any other placement of an adult or juvenile offender in the community under the custody or supervision of the department of corrections, the department of health and family services, a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 or any other person under contract with the department of corrections, the department of health and family services or a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 to exercise custody or supervision over the offender.

NOTE: Par. (b) is amended eff. 7-1-08 by 2003 Wis. Act 33 to read:

(b) "Community placement" means probation; extended supervision; parole; aftercare; conditional transfer into the community under s. 51.35(1); conditional transfer or discharge under s. 51.37(9); placement in a Type 2 child caring institution or a Type 2 secured correctional facility authorized under s.

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938.539(5); conditional release under s. 971.17; supervised release under s. 980.06 or 980.08; participation in the community residential confinement program under s. 301.046, the intensive sanctions program under s. 301.048, the corrective sanctions program under s. 938.533, the intensive supervision program under s. 938.534 or the serious juvenile offender program under s. 938.538; or any other placement of an adult or juvenile offender in the community under the custody or supervision of the department of corrections, the department of health and family services, a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 or any other person under contract with the department of corrections, the department of health and family services or a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 to exercise custody or supervision over the offender.

(cs) "Indian child" means any unmarried person who is under the age of 18 years and is affiliated with an Indian tribe or band in any of the following ways:

1. As a member of the tribe or band.
2. As a person who is both eligible for membership in the tribe or band and is the biological child of a member of the tribe or band.

(ct) "Indian unborn child" means an unborn child who, when born, may be eligible for affiliation with an Indian tribe or band in any of the following ways:

1. As a member of the tribe or band.
2. As a person who is both eligible for membership in the tribe or band and the biological child of a member of the tribe or band.

(cv) "Member of a religious order" means an individual who has taken vows devoting himself or herself to religious or spiritual principles and who is authorized or appointed by his or her religious order or organization to provide spiritual or religious advice or service.

(cx) "Member of the clergy" has the meaning given in s. 765.002(1) or means a member of a religious order, and includes brothers, ministers, monks, nuns, priests, rabbis, and sisters.

(d) "Neglect" means failure, refusal or inability on the part of a parent, guardian, legal custodian or other person exercising temporary or permanent control over a child, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child.

(f) "Record" means any document relating to the investigation, assessment and disposition of a report under this section.

(fm) "Relative" means a parent, grandparent, greatgrandparent, stepparent, brother, sister, first cousin, 2nd cousin, nephew, niece, uncle, aunt, stepgrandparent, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, stepuncle, or steppaunt.

(g) "Reporter" means a person who reports suspected abuse or neglect or a belief that abuse or neglect will occur under this section.

(h) "Subject" means a person or unborn child named in a report or record as any of the following:

1. A child who is the victim or alleged victim of abuse or neglect or who is threatened with abuse or neglect.

1m. An unborn child who is the victim or alleged victim of abuse or who is at substantial risk of abuse.

2. A person who is suspected of abuse or neglect or who has been determined to have abused or neglected a child or to have abused an unborn child.

(i) "Tribal agent" means the person designated under 25 CFR 23.12 by an Indian tribe or band to receive notice of involuntary child custody proceedings under the Indian child welfare act, 25 USC 1901 to 1963.

**(2) Persons Required to Report.** (a) Any of the following persons who has reasonable cause to suspect that a child seen by the person in the course of professional duties has been abused or neglected or who has reason to believe that a child seen by the person in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur shall, except as provided under sub. (2m), report as provided in sub. (3):

1. A physician.
2. A coroner.
3. A medical examiner.
4. A nurse.
5. A dentist.
6. A chiropractor.
7. An optometrist.
8. An acupuncturist.
9. A medical or mental health professional not otherwise specified in this paragraph.
10. A social worker.
11. A marriage and family therapist.

12. A professional counselor.

13. A public assistance worker, including a financial and employment planner, as defined in s. 49.141(1)(d).

14. A school teacher.

15. A school administrator.

16. A school counselor.

17. A mediator under s. 767.11.

18. A child-care worker in a day care center, group home, as described in s. 48.625(1m), or residential care center for children and youth.

19. A day care provider.

20. An alcohol or other drug abuse counselor.

21. A member of the treatment staff employed by or working under contract with a county department under s. 46.23, 51.42, or 51.437 or a residential care center for children and youth.

22. A physical therapist.

22m. A physical therapist assistant.

23. An occupational therapist.

24. A dietitian.

25. A speech-language pathologist.

26. An audiologist.

27. An emergency medical technician.

28. A first responder.

29. A police or law enforcement officer.

(b) A court-appointed special advocate who has reasonable cause to suspect that a child seen in the course of activities under s. 48.236(3) has been abused or neglected or who has reason to believe that a child seen in the course of those activities has been threatened with abuse and neglect and that abuse or neglect of the child will occur shall, except as provided in sub. (2m), report as provided in sub. (3).

(bm)1. Except as provided in subd. 3. and sub. (2m), a member of the clergy shall report as provided in sub. (3) if the member of the clergy has reasonable cause to suspect that a child seen by the member of the clergy in the course of his or her professional duties:

- a. Has been abused, as defined in s. 48.02(1)(b) to (f); or
- b. Has been threatened with abuse, as defined in s. 48.02(1)(b) to (f), and abuse of the child will likely occur.

2. Except as provided in subd. 3. and sub. (2m), a member of the clergy shall report as provided in sub. (3) if the member of the clergy has reasonable cause, based on observations made or information that he or she receives, to suspect that a member of the clergy has done any of the following:

- a. Abused a child, as defined in s. 48.02(1)(b) to (f).
- b. Threatened a child with abuse, as defined in s. 48.02(1)(b) to (f), and abuse of the child will likely occur.

3. A member of the clergy is not required to report child abuse information under subd. 1. or 2. that he or she receives solely through confidential communications made to him or her privately or in a confessional setting if he or she is authorized to hear or is accustomed to hearing such communications and, under the disciplines, tenets, or traditions of his or her religion, has a duty or is expected to keep those communications secret. Those disciplines, tenets, or traditions need not be in writing.

(c) Any person not otherwise specified in par. (a), (b), or (bm), including an attorney, who has reason to suspect that a child has been abused or neglected or who has reason to believe that a child has been threatened with abuse or neglect and that abuse or neglect of the child will occur may report as provided in sub. (3).

(d) Any person, including an attorney, who has reason to suspect that an unborn child has been abused or who has reason to believe that an unborn child is at substantial risk of abuse may report as provided in sub. (3).

(e) No person making a report under this subsection may be discharged from employment for so doing.

**(2m) Exception to Reporting Requirement.** (a) The purpose of this subsection is to allow children to obtain confidential health care services.

(b) In this subsection:

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1. "Health care provider" means a physician, as defined under s. 448.01(5), a physician assistant, as defined under s. 448.01(6), or a nurse holding a certificate of registration under s. 441.06(1) or a license under s. 441.10(3).

2. "Health care service" means family planning services, as defined in s. 253.07(1)(b), 1995 stats., pregnancy testing, obstetrical health care or screening, diagnosis and treatment for a sexually transmitted disease.

(c) Except as provided under pars. (d) and (e), the following persons are not required to report as suspected or threatened abuse, as defined in s. 48.02(1)(b), sexual intercourse or sexual contact involving a child:

1. A health care provider who provides any health care service to a child.

4. A person who obtains information about a child who is receiving or has received health care services from a health care provider.

(d) Any person described under par. (c)1. or 4. shall report as required under sub. (2) if he or she has reason to suspect any of the following:

1. That the sexual intercourse or sexual contact occurred or is likely to occur with a caregiver.

2. That the child suffered or suffers from a mental illness or mental deficiency that rendered or renders the child temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

3. That the child, because of his or her age or immaturity, was or is incapable of understanding the nature or consequences of sexual intercourse or sexual contact.

4. That the child was unconscious at the time of the act or for any other reason was physically unable to communicate unwillingness to engage in sexual intercourse or sexual contact.

5. That another participant in the sexual contact or sexual intercourse was or is exploiting the child.

(e) In addition to the reporting requirements under par. (d), a person described under par. (c)1. or 4. shall report as required under sub. (2) if he or she has any reasonable doubt as to the voluntariness of the child's participation in the sexual contact or sexual intercourse.

(3) **Reports; Investigation.** (a) *Referral of report.* 1. A person required to report under sub. (2) shall immediately inform, by telephone or personally, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department or the sheriff or city, village, or town police department of the facts and circumstances contributing to a suspicion of child abuse or neglect or of unborn child abuse or to a belief that abuse or neglect will occur.

2. The sheriff or police department shall within 12 hours, exclusive of Saturdays, Sundays, or legal holidays, refer to the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department all cases reported to it. The county department, department, or licensed child welfare agency may require that a subsequent report be made in writing.

3. A county department, the department, or a licensed child welfare agency under contract with the department shall within 12 hours, exclusive of Saturdays, Sundays, or legal holidays, refer to the sheriff or police department all cases of suspected or threatened abuse, as defined in s. 48.02(1)(b) to (f), reported to it. For cases of suspected or threatened abuse, as defined in s. 48.02(1)(a), (am), or (gm), or neglect, each county department, the department, and a licensed child welfare agency under contract with the department shall adopt a written policy specifying the kinds of reports it will routinely report to local law enforcement authorities.

4. If the report is of suspected or threatened abuse, as defined in s. 48.02(1)(b) to (f), the sheriff or police department and the county department, department, or licensed child welfare agency under contract with the department shall coordinate the planning and execution of the investigation of the report.

(b) *Duties of local law enforcement agencies.* 1. Any person reporting under this section may request an immediate investigation by the sheriff or police department if the person has reason to suspect that the health or safety of a child or of an unborn child is in immediate danger. Upon receiving such a request, the sheriff or

police department shall immediately investigate to determine if there is reason to believe that the health or safety of the child or unborn child is in immediate danger and take any necessary action to protect the child or unborn child.

2. If the investigating officer has reason under s. 48.19(1)(c) or (cm) or (d)5. or 8. to take a child into custody, the investigating officer shall take the child into custody and deliver the child to the intake worker under s. 48.20.

2m. If the investigating officer has reason under s. 48.193(1)(c) or (d) 2. to take the adult expectant mother of an unborn child into custody, the investigating officer shall take the adult expectant mother into custody and deliver the adult expectant mother to the intake worker under s. 48.203.

3. If the sheriff or police department determines that criminal action is necessary, the sheriff or police department shall refer the case to the district attorney for criminal prosecution. Each sheriff and police department shall adopt a written policy specifying the kinds of reports of suspected or threatened abuse, as defined in s. 48.02(1)(b) to (f), that the sheriff or police department will routinely refer to the district attorney for criminal prosecution.

(bm) *Notice of report to Indian tribal agent.* In a county which has wholly or partially within its boundaries a federally recognized Indian reservation or a bureau of Indian affairs service area for the Ho-Chunk tribe, if a county department which receives a report under par. (a) pertaining to a child or unborn child knows that the child is an Indian child who resides in the county or that the unborn child is an Indian unborn child whose expectant mother resides in the county, the county department shall provide notice, which shall consist only of the name and address of the child or expectant mother and the fact that a report has been received about that child or unborn child, within 24 hours to one of the following:

1. If the county department knows with which tribe or band the child is affiliated, or with which tribe or band the unborn child, when born, may be eligible for affiliation, and it is a Wisconsin tribe or band, the tribal agent of that tribe or band.

2. If the county department does not know with which tribe or band the child is affiliated, or with which tribe or band the unborn child, when born, may be eligible for affiliation, or the child or expectant mother is not affiliated with a Wisconsin tribe or band, the tribal agent serving the reservation or Ho-Chunk service area where the child or expectant mother resides.

3. If neither subd. 1. nor 2. applies, any tribal agent serving a reservation or Ho-Chunk service area in the county.

(c) *Duties of county departments.* 1. Within 24 hours after receiving a report under par. (a), the agency shall, in accordance with the authority granted to the department under s. 48.48(17)(a) 1. or the county department under s.

48.57(1)(a), initiate a diligent investigation to determine if the child or unborn child is in need of protection or services. The investigation shall be conducted in accordance with standards established by the department for conducting child abuse and neglect investigations or unborn child abuse investigations. If the investigation is of a report of child abuse or neglect or of threatened child abuse or neglect by a caregiver specified in sub. (1)(am) 5. to 8. who continues to have access to the child or a caregiver specified in sub. (1)(am)1. to 4., or of a report that does not disclose who is suspected of the child abuse or neglect and in which the investigation does not disclose who abused or neglected the child, the investigation shall also include observation of or an interview with the child, or both, and, if possible, an interview with the child's parents, guardian or legal custodian. If the investigation is of a report of child abuse or neglect or threatened child abuse or neglect by a caregiver who continues to reside in the same dwelling as the child, the investigation shall also include, if possible, a visit to that dwelling. At the initial visit to the child's dwelling, the person making the investigation shall identify himself or herself and the agency involved to the child's parents, guardian or legal custodian. The agency may contact, observe or interview the child at any location without permission from the child's parent, guardian or legal custodian if necessary to determine if the child is in need of protection or services, except that the person making the investigation may enter a child's dwelling

only with permission from the child's parent, guardian or legal custodian or after obtaining a court order to do so.

NOTE: Subd. 1. was held unconstitutional as applied by the U.S. 7th Circuit Court of Appeals in *Doe v. Heck*, 327 F.3d 492 (2003).

2.a. If the person making the investigation is an employee of the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department and he or she determines that it is consistent with the child's best interest in terms of physical safety and physical health to remove the child from his or her home for immediate protection, he or she shall take the child into custody under s. 48.08(2) or 48.19(1)(c) and deliver the child to the intake worker under s. 48.20.

b. If the person making the investigation is an employee of a licensed child welfare agency which is under contract with the county department and he or she determines that any child in the home requires immediate protection, he or she shall notify the county department of the circumstances and together with an employee of the county department shall take the child into custody under s. 48.08(2) or 48.19(1)(c) and deliver the child to the intake worker under s. 48.20.

2m.a. If the person making the investigation is an employee of the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department and he or she determines that it is consistent with the best interest of the unborn child in terms of physical safety and physical health to take the expectant mother into custody for the immediate protection of the unborn child, he or she shall take the expectant mother into custody under s. 48.08(2), 48.19(1)(cm) or 48.193(1)(c) and deliver the expectant mother to the intake worker under s. 48.20 or 48.203.

b. If the person making the investigation is an employee of a licensed child welfare agency which is under contract with the county department and he or she determines that any unborn child requires immediate protection, he or she shall notify the county department of the circumstances and together with an employee of the county department shall take the expectant mother of the unborn child into custody under s. 48.08(2), 48.19(1)(cm) or 48.193(1)(c) and deliver the expectant mother to the intake worker under s. 48.20 or 48.203.

3. If the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department determines that a child, any member of the child's family or the child's guardian or legal custodian is in need of services or that the expectant mother of an unborn child is in need of services, the county department, department or licensed child welfare agency shall offer to provide appropriate services or to make arrangements for the provision of services. If the child's parent, guardian or legal custodian or the expectant mother refuses to accept the services, the county department, department or licensed child welfare agency may request that a petition be filed under s. 48.13 alleging that the child who is the subject of the report or any other child in the home is in need of protection or services or that a petition be filed under s. 48.133 alleging that the unborn child who is the subject of the report is in need of protection or services.

4. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall determine, within 60 days after receipt of a report, whether abuse or neglect has occurred or is likely to occur. The determination shall be based on a preponderance of the evidence produced by the investigation. A determination that abuse or neglect has occurred may not be based solely on the fact that the child's parent, guardian or legal custodian in good faith selects and relies on prayer or other religious means for treatment of disease or for remedial care of the child. In making a determination that emotional damage has occurred, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall give due regard to the culture of the subjects. This subdivision does not prohibit a court from ordering medical services for the child if the child's health requires it.

5. The agency shall maintain a record of its actions in connection with each report it receives. The record shall include a description of the services provided to any child and to the parents, guardian or legal custodian of the child or to any expectant mother

of an unborn child. The agency shall update the record every 6 months until the case is closed.

5m. If the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department determines under subd. 4. that a specific person has abused or neglected a child, the county department, department or licensed child welfare agency, within 15 days after the date of the determination, shall notify the person in writing of the determination, the person's right to appeal the determination and the procedure by which the person may appeal the determination, and the person may appeal the determination in accordance with the procedures established by the department under this subdivision. The department shall promulgate rules establishing procedures for conducting an appeal under this subdivision. Those procedures shall include a procedure permitting an appeal under this subdivision to be held in abeyance pending the outcome of any criminal proceedings or any proceedings under s. 48.13 based on the alleged abuse or neglect or the outcome of any investigation that may lead to the filing of a criminal complaint or a petition under s. 48.13 based on the alleged abuse or neglect.

6. The agency shall, within 60 days after it receives a report from a person required under sub. (2) to report, inform the reporter what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report.

6m. If a person who is not required under sub. (2) to report makes a report and is a relative of the child, other than the child's parent, or is a relative of the expectant mother of the unborn child, that person may make a written request to the agency for information regarding what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report. An agency that receives a written request under this subdivision shall, within 60 days after it receives the report or 20 days after it receives the written request, whichever is later, inform the reporter in writing of what action, if any, was taken to protect the health and welfare of the child or unborn child, unless a court order prohibits that disclosure, and of the duty to keep the information

confidential under sub. (7)(e) and the penalties for failing to do so under sub. (7)(f). The agency may petition the court ex parte for an order prohibiting that disclosure and, if the agency does so, the time period within which the information must be disclosed is tolled on the date the petition is filed and remains tolled until the court issues a decision. The court may hold an ex parte hearing in camera and shall issue an order granting the petition if the court determines that disclosure of the information would not be in the best interests of the child or unborn child.

7. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall cooperate with law enforcement officials, courts of competent jurisdiction, tribal governments and other human services agencies to prevent, identify and treat child abuse and neglect and unborn child abuse. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall coordinate the development and provision of services to abused and neglected children, to abused unborn children to families in which child abuse or neglect has occurred, to expectant mothers who have abused their unborn children, to children and families when circumstances justify a belief that abuse or neglect will occur and to the expectant mothers of unborn children when circumstances justify a belief that unborn child abuse will occur.

8. Using the format prescribed by the department, each county department shall provide the department with information about each report that the county department receives or that is received by a licensed child welfare agency that is under contract with the county department and about each investigation that the county department or a licensed child welfare agency under contract with the county department conducts. Using the format prescribed by the department, a

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licensed child welfare agency under contract with the department shall provide the department with information about each report that the child welfare agency receives and about each investigation that the child welfare agency conducts. This information shall be used by the department to monitor services provided by county departments or licensed child welfare agencies under contract with county departments or the department. The department shall use nonidentifying information to maintain statewide statistics on child abuse and neglect and on unborn child abuse, and for planning and policy development purposes.

9. The agency may petition for child abuse restraining orders and injunctions under s. 48.25(6).

(cm) Contract with licensed child welfare agencies. A county department may contract with a licensed child welfare agency to fulfill the county department's duties specified under par. (c)1., 2.b., 2m.b., 5., 6., 6m. and 8. The department may contract with a licensed child welfare agency to fulfill the department's duties specified under par. (c)1., 2.a., 2m.b., 3., 4., 5., 5m., 6., 6m., 7., 8. and 9. in a county having a population of 500,000 or more. The confidentiality provisions specified in sub. (7) shall apply to any licensed child welfare agency with which a county department or the department contracts.

(d) *Independent investigation.* 1. In this paragraph, "agent" includes, but is not limited to, a foster parent, treatment foster parent or other person given custody of a child or a human services professional employed by a county department under s. 51.42 or 51.437 or by a child welfare agency who is working with a child or an expectant mother of an unborn child under contract with or under the supervision of the department in a county having a population of 500,000 or more or a county department under s. 46.22.

2. If an agent or employee of an agency required to investigate under this subsection is the subject of a report, or if the agency determines that, because of the relationship between the agency and the subject of a report, there is a substantial probability that the agency would not conduct an unbiased investigation, the agency shall, after taking any action necessary to protect the child or unborn child, notify the department. Upon receipt of the notice, the department, in a county having a population of less than 500,000 or a county department or child welfare agency designated by the department in any county shall conduct an independent investigation. If the department designates a county department under s. 46.22, 46.23, 51.42 or 51.437, that county department shall conduct the independent investigation. If a licensed child welfare agency agrees to conduct the independent investigation, the department may designate the child welfare agency to do so. The powers and duties of the department or designated county department or child welfare agency making an independent investigation are those given to county departments under par. (c).

(4) *Immunity from Liability.* Any person or institution participating in good faith in the making of a report, conducting an investigation, ordering or taking of photographs or ordering or performing medical examinations of a child or of an expectant mother under this section shall have immunity from any liability, civil or criminal, that results by reason of the action. For the purpose of any proceeding, civil or criminal, the good faith of any person reporting under this section shall be presumed. The immunity provided under this subsection does not apply to liability for abusing or neglecting a child or for abusing an unborn child.

(5) *Coroner's Report.* Any person or official required to report cases of suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report the fact to the appropriate medical examiner or coroner. The medical examiner or coroner shall accept the report for investigation and shall report the findings to the appropriate district attorney; to the department or, in a county having a population of 500,000 or more, to a licensed child welfare agency under contract with the department; to the county department and, if the institution making the report initially is a hospital, to the hospital.

(6) *Penalty.* Whoever intentionally violates this section by failure to report as required may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

(7) *Confidentiality.* (a) All reports made under this section, notices provided under sub. (3)(bm) and records maintained by an agency and other persons, officials and institutions shall be

confidential. Reports and records may be disclosed only to the following persons:

1. The subject of a report, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

1m. A reporter described in sub. (3)(c) 6m. who makes a written request to an agency for information regarding what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report, unless a court order under sub. (3)(c) 6m. prohibits disclosure of that information to that reporter, except that the only information that may be disclosed is information in the record regarding what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report.

2. Appropriate staff of an agency or a tribal social services department.

2m. A person authorized to provide or providing intake or dispositional services for the court under s. 48.067, 48.069 or 48.10.

2r. A person authorized to provide or providing intake or dispositional services under s. 938.067, 938.069 or 938.10.

3. An attending physician for purposes of diagnosis and treatment.

3m. A child's parent, guardian or legal custodian or the expectant mother of an unborn child, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

4. A child's foster parent, treatment foster parent or other person having physical custody of the child or a person having physical custody of the expectant mother of an unborn child, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

5. A professional employee of a county department under s. 51.42 or 51.437 who is working with the child or the expectant mother of the unborn child under contract with or under the supervision of the county department under s. 46.22 or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

6. A multidisciplinary child abuse and neglect or unborn child abuse team recognized by the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

6m. A person employed by a child advocacy center recognized by the county board, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department, to the extent necessary to perform the services for which the center is recognized by the county board, the county department, the department or the licensed child welfare agency.

8. A law enforcement officer or law enforcement agency or a district attorney for purposes of investigation or prosecution.

8m. The department of corrections, the department of health and family services, a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 or any other person under contract with the department of corrections, the department of health and family services or a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 to exercise custody or supervision over a person who is subject to community placement for purposes of investigating or providing services to a person who is subject to community placement and who is the subject of a report. In making its investigation, the department of corrections, department of health and family services, county department or other person shall cooperate with the agency making the investigation under sub. (3)(c) or (d).

9. A court or administrative agency for use in a proceeding relating to the licensing or regulation of a facility regulated under this chapter.

10. A court conducting proceedings under s. 48.21 or 48.213, a court conducting proceedings related to a petition under s. 48.13, 48.133 or 48.42 or a court conducting

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dispositional proceedings under subch. VI or VIII in which abuse or neglect of the child who is the subject of the report or record or abuse of the unborn child who is the subject of the report or record is an issue.

10g. A court conducting proceedings under s. 48.21, a court conducting proceedings related to a petition under s. 48.13(3m) or (10m) or a court conducting dispositional proceedings under subch. VI in which an issue is the substantial risk of abuse or neglect of a child who, during the time period covered by the report or record, was in the home of the child who is the subject of the report or record.

10j. A court conducting proceedings under s. 938.21, a court conducting proceedings relating to a petition under ch. 938 or a court conducting dispositional proceedings under subch. VI of ch. 938 in which abuse or neglect of the child who is the subject of the report or record is an issue.

10m. A tribal court, or other adjudicative body authorized by a tribe or band to perform child welfare functions, that exercises jurisdiction over children and unborn children alleged to be in need of protection or services for use in proceedings in which abuse or neglect of the child who is the subject of the report or record or abuse of the unborn child who is the subject of the report or record is an issue.

10r. A tribal court, or other adjudicative body authorized by a tribe or band to perform child welfare functions, that exercises jurisdiction over children alleged to be in need of protection or services for use in proceedings in which an issue is the substantial risk of abuse or neglect of a child who, during the time period covered by the report or record, was in the home of the child who is the subject of the report or record.

11. The county corporation counsel or district attorney representing the interests of the public, the agency legal counsel and the counsel or guardian ad litem representing the interests of a child in proceedings under subd. 10., 10g. or 10j. and the guardian ad litem representing the interests of an unborn child in proceedings under subd. 10.

11m. An attorney representing the interests of an Indian tribe or band in proceedings under subd. 10m. or 10r., of an Indian child in proceedings under subd. 10m. or 10r. or of an Indian unborn child in proceedings under subd. 10m.

11r. A volunteer court-appointed special advocate designated under s. 48.236(1) or person employed by a court-appointed special advocate program recognized by the chief judge of a judicial administrative district under s. 48.07(5), to the extent necessary for the court-appointed special advocate to perform the advocacy services specified in s. 48.236(3) that the court-appointed special advocate was designated to perform in proceedings related to a petition under s. 48.13.

12. A person engaged in bona fide research, with the permission of the department. Information identifying subjects and reporters may not be disclosed to the researcher.

13. The department, a county department under s. 48.57(1)(e) or (hm) or a licensed child welfare agency ordered to conduct a screening or an investigation of a stepparent under s. 48.88(2)(c).

14. A grand jury if it determines that access to specified records is necessary for the conduct of its official business.

14m. A judge conducting proceedings under s. 968.26.

15. A child fatality review team recognized by the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

15g. A citizen review panel established or designated by the department or a county department.

15m. A coroner, medical examiner or pathologist or other physician investigating the cause of death of a child whose death is unexplained or unusual or is associated with unexplained or suspicious circumstances.

17. A federal agency, state agency of this state or any other state or local governmental unit located in this state or any other state that has a need for a report or record in order to carry out its responsibility to protect children from abuse or neglect or to protect unborn children from abuse.

(am) Notwithstanding par. (a)(intro.), a tribal agent who receives notice under sub. (3)(bm) may disclose the notice to a tribal social services department.

(b) Notwithstanding par. (a), either parent of a child may authorize the disclosure of a record for use in a child custody proceeding under s. 767.24 or 767.325 or in an adoption proceeding under s. 48.833, 48.835, 48.837 or 48.839 when the child has been the subject of a report. Any information that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(c) Notwithstanding par. (a), the subject of a report may authorize the disclosure of a record to the subject's attorney. The authorization shall be in writing. Any information that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(cm) Notwithstanding par. (a), an agency may disclose information from its records for use in proceedings under s. 48.25(6), 813.122 or 813.125.

(cr)1. Notwithstanding par. (a) and subject to subd. 3., an agency may disclose to the general public a written summary of the information specified in subd. 2. relating to any child who has died or been placed in serious or critical condition, as determined by a physician, as a result of any suspected abuse or neglect that has been reported under this section if any of the following circumstances apply:

a. A person has been charged with a crime for causing the death or serious or critical condition of the child as a result of the suspected abuse or neglect, or the district attorney indicates that a person who is deceased would have been charged with a crime for causing the death or serious or critical condition of the child as a result of the suspected abuse or neglect, but for the fact that the person is deceased.

b. A judge, district attorney, law enforcement officer, law enforcement agency or any other officer or agency whose official duties include the investigation or prosecution of crime has previously disclosed to the public, in the performance of the official duties of the officer or agency, that the suspected abuse or neglect of the child has been investigated under sub. (3) or that child welfare services have been provided to the child or the child's family under this chapter.

c. A parent, guardian or legal custodian of the child or the child, if 14 years of age or over, has previously disclosed or authorized the disclosure of the information specified in subd. 2.

2. If an agency is permitted to disclose information under subd. 1. relating to a child who has died or been placed in serious or critical condition as a result of any suspected abuse or neglect that has been reported under this section, the agency may disclose all of the following information from its records:

a. A description of any investigation made by the agency in response to the report of the suspected abuse or neglect, a statement of the determination made by the agency under sub. (3)(c)

4. with respect to the report and the basis for that determination, a statement of whether any services were offered or provided to the child, the child's family or the person suspected of the abuse or neglect and a statement of whether any other action was taken by the agency to protect the child who is the subject of the report or any other child residing in the same dwelling as the child who is the subject of the report.

b. Whether any previous report of suspected or threatened abuse or neglect of the child has been made to the agency and the date of the report, a statement of the determination made by the agency under sub. (3)(c)4. with respect to the report and the basis for that determination, a statement of whether any services were offered or provided to the child, the child's family or the person suspected of the abuse or neglect and a statement of whether any other action was taken by the agency to protect the child who is the subject of the report or any other child residing in the same dwelling as the child who is the subject of the report.

c. Whether the child or the child's family has received any services under this chapter prior to the report of suspected abuse or neglect that caused the child's death or serious or critical condition or any previous report of suspected or threatened abuse or neglect.

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3. An agency may not disclose any of the information described in subd. 2. if any of the following applies:

a. The agency determines that disclosure of the information would be contrary to the best interests of the child who is the subject of the report, the child's siblings or any other child residing in the same dwelling as the child who is the subject of the report or that disclosure of the information is likely to cause mental, emotional or physical harm or danger to the child who is the subject of the report, the child's siblings, any other child residing in the same dwelling as the child who is the subject of the report or any other person.

b. The district attorney determines that disclosure of the information would jeopardize any ongoing or future criminal investigation or prosecution or would jeopardize a defendant's right to a fair trial.

c. The agency determines that disclosure of the information would jeopardize any ongoing or future civil investigation or proceeding or would jeopardize the fairness of such a proceeding.

d. Disclosure of the information is not authorized by state law or rule or federal law or regulation.

e. The investigation under sub. (3) of the report of the suspected abuse or neglect has not been completed, in which case the agency may only disclose that the report is under investigation.

f. Disclosure of the information would reveal the identity of the child who is the subject of the report, the child's siblings, the child's parent, guardian or legal custodian or any other person residing in the same dwelling as the child, and information that would reveal the identity of those persons has not previously been disclosed to the public.

g. Disclosure of the information would reveal the identity of a reporter or any other person who provides information relating to the suspected abuse or neglect of the child.

4. Any person who requests the information specified in subd. 2. under the circumstances specified in subd. 1. and whose request is denied may petition the court to order the disclosure of that information. On receiving a petition under this subdivision, the court shall notify the agency, the district attorney, the child and the child's parent, guardian or legal custodian of the petition. If any person notified objects to the disclosure, the court may hold a hearing to take evidence and hear argument relating to the disclosure of the information. The court shall make an in camera inspection of the information sought to be disclosed and shall order disclosure of the information, unless the court finds that any of the circumstances specified in subd. 3. apply.

5. Any person acting in good faith in disclosing or refusing to disclose the information specified in subd. 2. under the circumstances specified in subd. 1. is immune from any liability, civil or criminal, that may result by reason of that disclosure or nondisclosure. For purposes of any proceeding, civil or criminal, the good faith of a person in disclosing or refusing to disclose the information specified in subd. 2. under the circumstances specified in subd. 1. shall be presumed.

(d) Notwithstanding par. (a), the department may have access to any report or record maintained by an agency under this section.

(e) A person to whom a report or record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this section.

(f) Any person who violates this subsection, or who permits or encourages the unauthorized dissemination or use of information contained in reports and records made under this section, may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

**(8) Education, Training and Program Development and Coordination.** (a) The department, the county departments, and a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more to the extent feasible shall conduct continuing education and training programs for staff of the department, the county departments, licensed child welfare agencies under contract with the department or a county department, law enforcement agencies, and the tribal social services departments, persons and officials required to report, the general public, and others as appropriate. The programs shall be designed to encourage reporting of child abuse and neglect and of unborn child abuse, to encourage self-reporting and voluntary acceptance of services and to improve communication, cooperation, and coordination in the identification, prevention, and treatment of child

abuse and neglect and of unborn child abuse. Programs provided for staff of the department, county departments, and licensed child welfare agencies under contract with county departments or the department whose responsibilities include the investigation or treatment of child abuse or neglect shall also be designed to provide information on means of recognizing and appropriately responding to domestic abuse, as defined in s. 46.95(1)(a). The department, the county departments, and a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more shall develop public information programs about child abuse and neglect and about unborn child abuse.

(b) The department shall to the extent feasible ensure that there are available in the state administrative procedures, personnel trained in child abuse and neglect and in unborn child abuse, multidisciplinary programs and operational procedures and capabilities to deal effectively with child abuse and neglect cases and with unborn child abuse cases. These procedures and capabilities may include, but are not limited to, receipt, investigation and verification of reports; determination of treatment or ameliorative social services; or referral to the appropriate court.

(c) In meeting its responsibilities under par. (a) or (b), the department, a county department or a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more may contract with any public or private organization which meets the standards set by the department. In entering into the contracts the department, county department or licensed child welfare agency shall give priority to parental organizations combating child abuse and neglect or unborn child abuse.

(d)1. Each agency staff member and supervisor whose responsibilities include investigation or treatment of child abuse and neglect or of unborn child abuse shall successfully complete training in child abuse and neglect protective services and in unborn child abuse protective services approved by the department. The training shall include information on means of recognizing and appropriately responding to domestic abuse, as defined in s. 46.95(1)(a). The department shall monitor compliance with this subdivision according to rules promulgated by the department.

2. Each year the department shall make available training programs that permit intake workers and agency staff members and supervisors to satisfy the requirements under subd. 1. and s. 48.06(1)(am) 3. and (2)(c).

**(9) Annual Reports.** Annually, the department shall prepare and transmit to the governor, and to the legislature under s. 13.172(2), a report on the status of child abuse and neglect programs and on the status of unborn child abuse programs. The report shall include a full statistical analysis of the child abuse and neglect reports, and the unborn child abuse reports, made through the last calendar year, an evaluation of services offered under this section and their effectiveness, and recommendations for additional legislative and other action to fulfill the purpose of this section. The department shall provide statistical breakdowns by county, if requested by a county.

**(10) Current List of Tribal Agents.** The department shall annually provide to each agency described in sub. (3)(bm)(intro.) a current list of all tribal agents in the state.

**48.988 INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN.** The interstate compact on the placement of children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

**(1) Article I - Purpose and Policy.** It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.



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(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

**(2) Article II - Definitions.** As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Placement" means the arrangement for the care of a child in a family free or boarding home, in a child-caring agency, or in a residential care center for children and youth, but does not include any institution caring for the mentally ill, mentally defective, or epileptic, any institution primarily educational in character, or any hospital or other medical facility.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings or causes to be sent or brought any child to another party state.

**(3) Article III - Conditions for Placement.**

(a) No sending agency shall send, bring or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this subsection and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

1. The name, date and place of birth of the child.
2. The identity and address or addresses of the parents or legal guardian.
3. The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring or place the child.
4. A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to par. (b) may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

**(4) Article IV - Penalty for Illegal Placement.** The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

**(5) Article V - Retention of Jurisdiction.**

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in par. (a).

**(6) Article VI - Institutional Care of Delinquent Children.** A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to being sent to such other party jurisdiction for institutional care and the court finds that:

(a) Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(b) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

**(7) Article VII - Compact Administrator.** The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his or her jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

**(8) Article VIII - Limitations.** This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by the child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or guardian and leaving the child with any such relative or non-agency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

**(9) Article IX - Enactment and Withdrawal.** This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under, this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

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(10) Article X - Construction and Severability. The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(11) Financial responsibility for any child placed under the interstate compact on the placement of children shall be determined in accordance with sub. (5) in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of s. 49.90 or 767.42, ch. 769 or any other applicable state law fixing responsibility for the support of children also may be invoked.

(14) The officers and agencies of this state and its subdivisions having authority to place children may enter into agreements with appropriate officers or agencies of or in other party states under sub. (5)(b). Any agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the department in the case of the state.

(15) Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under the provisions of this chapter shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by sub. (5)(b).

(16) Any court having jurisdiction to place delinquent children may place such a child in an institution or in another state under sub. (5) and shall retain jurisdiction as provided in sub. (5).

**51.61 PATIENTS RIGHTS.**

(1) In this section, "patient" means any individual who is receiving services for mental illness, developmental disabilities, alcoholism or drug dependency, including any individual who is admitted to a treatment facility in accordance with this chapter or ch. 48 or 55 or who is detained, committed or placed under this chapter or ch. 48, 55, 971, 975 or 980, or who is transferred to a treatment facility under s. 51.35(3) or 51.37 or who is receiving care or treatment for those conditions through the department or a county department under s. 51.42 or 51.437 or in a private treatment facility. "Patient" does not include persons committed under ch. 975 who are transferred to or residing in any state prison listed under s. 302.01. In private hospitals and in public general hospitals, "patient" includes any individual who is admitted for the primary purpose of treatment of mental illness, developmental disability, alcoholism or drug abuse but does not include an individual who receives treatment in a hospital emergency room nor an individual who receives treatment on an outpatient basis at those hospitals, unless the individual is otherwise covered under this subsection. Except as provided in sub. (2), each patient shall:

(a) Upon admission or commitment be informed orally and in writing of his or her rights under this section. Copies of this section shall be posted conspicuously in each patient area, and shall be available to the patient's guardian and immediate family.

(b)1. Have the right to refuse to perform labor which is of financial benefit to the facility in which the patient is receiving treatment or service. Privileges or release from the facility may not be conditioned upon the performance of any labor which is regulated by this paragraph. Patients may voluntarily engage in therapeutic labor which is of financial benefit to the facility if such labor is compensated in accordance with a plan approved by the department and if:

a. The specific labor is an integrated part of the patient's treatment plan approved as a therapeutic activity by the professional staff member responsible for supervising the patient's treatment;

b. The labor is supervised by a staff member who is qualified to oversee the therapeutic aspects of the activity;

c. The patient has given his or her written informed consent to engage in such labor and has been informed that such consent may be withdrawn at any time; and

d. The labor involved is evaluated for its appropriateness by the staff of the facility at least once every 120 days.

2. Patients may also voluntarily engage in noncompensated therapeutic labor which is of financial benefit to the facility, if the conditions for engaging in compensated labor under this paragraph are met and if:

a. The facility has attempted to provide compensated labor as a first alternative and all resources for providing compensated labor have been exhausted;

b. Uncompensated therapeutic labor does not cause layoffs of staff hired by the facility to otherwise perform such labor; and

c. The patient is not required in any way to perform such labor. Tasks of a personal housekeeping nature are not to be considered compensable labor.

3. Payment to a patient performing labor under this section shall not be applied to costs of treatment without the informed, written consent of such patient. This paragraph does not apply to individuals serving a criminal sentence who are transferred from a state correctional institution under s. 51.37(5) to a treatment facility.

(cm) Have the rights specified under subd. 1. to send and receive sealed mail, subject to the limitations specified under subd. 2.

1. Patients have an unrestricted right to send sealed mail and receive sealed mail to or from legal counsel, the courts, government officials, private physicians, and licensed psychologists, and have reasonable access to letter writing materials including postage stamps. A patient shall also have a right to send sealed mail and receive sealed mail to or from other persons, subject to physical examination in the patient's presence if there is reason to believe that such communication contains contraband materials or objects that threaten the security of patients, prisoners, or staff. Such reasons shall be written in the individual's treatment record. The officers and staff of a facility may not read any mail covered by this subdivision.

2. The rights of a patient detained or committed under ch. 980 to send and receive sealed mail are subject to the following limitations:

a. An officer or staff member of the facility at which the patient is placed may delay delivery of the mail to the patient for a reasonable period of time to verify whether the person named as the sender actually sent the mail; may open the mail and inspect it for contraband; or may, if the officer or staff member cannot determine whether the mail contains contraband, return the mail to the sender along with notice of the facility mail policy.

b. The director of the facility or his or her designee may, in accordance with the standards and the procedure under sub. (2) for denying a right for cause, authorize a member of the facility treatment staff to read the mail, if the director or his or her designee has reason to believe that the mail could pose a threat to security at the facility or seriously interfere with the treatment, rights, or safety of others.

(d) Except in the case of a person who is committed for alcoholism, have the right to petition the court for review of the commitment order or for withdrawal of the order or release from commitment as provided in s. 51.20(16).

(e) Except in the case of a patient who is admitted or transferred under s. 51.35(3) or 51.37 or under ch. 971 or 975, have the right to the least restrictive conditions necessary to achieve the purposes of admission, commitment or protective placement, under programs, services and resources that the county board of supervisors is reasonably able to provide within the limits of available state and federal funds and of county funds required to be appropriated to match state funds.

(f) Have a right to receive prompt and adequate treatment, rehabilitation and educational services appropriate for his or her condition, under programs, services and resources that the county board of supervisors is reasonably able to provide

within the limits of available state and federal funds and of county funds required to be appropriated to match state funds.

(fm) Have the right to be informed of his or her treatment and care and to participate in the planning of his or her treatment and care.

(g) Have the following rights, under the following procedures, to refuse medication and treatment:

1. Have the right to refuse all medication and treatment except as ordered by the court under subd. 2., or in a situation in which the medication or treatment is necessary to prevent serious physical harm to the patient or to others. Medication and treatment during this period may be refused on religious grounds only as provided in par. (h).

2. At or after the hearing to determine probable cause for commitment but prior to the final commitment order, other than for a subject individual who is alleged to meet the commitment standard under s. 51.20(1)(a)2.e., the court shall, upon the motion of any interested person, and may, upon its own motion, hold a hearing to determine whether there is probable cause to believe that the individual is not competent to refuse medication or treatment and whether the medication or treatment will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for or participate in subsequent legal proceedings. If the court determines that there is probable cause to believe the allegations under this subdivision, the court shall issue an order permitting medication or treatment to be administered to the individual regardless of his or her consent. The order shall apply to the period between the date of the issuance of the order and the date of the final order under s. 51.20(13), unless the court dismisses the petition for commitment or specifies a shorter period. The hearing under this subdivision shall meet the requirements of s. 51.20(5), except for the right to a jury trial.

3. Following a final commitment order, other than for a subject individual who is determined to meet the commitment standard under s. 51.20(1)(a)2.e., have the right to exercise informed consent with regard to all medication and treatment unless the committing court or the court in the county in which the individual is located, within 10 days after the filing of the motion of any interested person and with notice of the motion to the individual's counsel, if any, the individual and the applicable counsel under s. 51.20(4), makes a determination, following a hearing, that the individual is not competent to refuse medication or treatment or unless a situation exists in which the medication or treatment is necessary to prevent serious physical harm to the individual or others. A report, if any, on which the motion is based shall accompany the motion and notice of motion and shall include a statement signed by a licensed physician that asserts that the subject individual needs medication or treatment and that the individual is not competent to refuse medication or treatment, based on an examination of the individual by a licensed physician. The hearing under this subdivision shall meet the requirements of s. 51.20(5), except for the right to a jury trial. At the request of the subject individual, the individual's counsel or applicable counsel under s. 51.20(4), the hearing may be postponed, but in no case may the postponed hearing be held more than 20 days after a motion is filed.

3m. Following a final commitment order for a subject individual who is determined to meet the commitment standard under s. 51.20(1)(a)2. e., the court shall issue an order permitting medication or treatment to be administered to the individual regardless of his or her consent.

4. For purposes of a determination under subd. 2. or 3., an individual is not competent to refuse medication or treatment if, because of mental illness, developmental disability, alcoholism or drug dependence, and after the advantages and disadvantages of and alternatives to accepting the particular medication or treatment have been explained to the individual, one of the following is true:

a. The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives.

b. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness, developmental disability, alcoholism or drug dependence in order to make an informed choice as to whether to accept or refuse medication or treatment.

(h) Have a right to be free from unnecessary or excessive medication at any time. No medication may be administered to a patient except at the written order of a physician. The attending physician is responsible for all medication which is administered to a patient. A record of the medication which is administered to each patient shall be kept in his or her medical records. Medication may not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with a patient's treatment program. Except when medication or medical treatment has been ordered by the court under par. (g) or is necessary to prevent serious physical harm to others as evidenced by a recent overt act, attempt or threat to do such harm, a patient may refuse medications and medical treatment if the patient is a member of a recognized religious organization and the religious tenets of such organization prohibit such medications and treatment. The individual shall be informed of this right prior to administration of medications or treatment whenever the patient's condition so permits.

(i)1. Except as provided in subd. 2., have a right to be free from physical restraint and isolation except for emergency situations or when isolation or restraint is a part of a treatment program. Isolation or restraint may be used only when less restrictive measures are ineffective or not feasible and shall be used for the shortest time possible. When a patient is placed in isolation or restraint, his or her status shall be reviewed once every 30 minutes. Each facility shall have a written policy covering the use of restraint or isolation that ensures that the dignity of the individual is protected, that the safety of the individual is ensured, and that there is regular, frequent monitoring by trained staff to care for bodily needs as may be required. Isolation or restraint may be used for emergency situations only when it is likely that the patient may physically harm himself or herself or others. The treatment director shall specifically designate physicians who are authorized to order isolation or restraint, and shall specifically designate licensed psychologists who are authorized to order isolation. If the treatment director is not a physician, the medical director shall make the designation. In the case of a center for the developmentally disabled, use shall be authorized by the director of the center. The authorization for emergency use of isolation or restraint shall be in writing, except that isolation or restraint may be authorized in emergencies for not more than one hour, after which time an appropriate order in writing shall be obtained from the physician or licensed psychologist designated by the director, in the case of isolation, or the physician so designated in the case of restraint. Emergency isolation or restraint may not be continued for more than 24 hours without a new written order. Isolation may be used as part of a treatment program if it is part of a written treatment plan, and the rights specified in this subsection are provided to the patient. The use of isolation as a part of a treatment plan shall be explained to the patient and to his or her guardian, if any, by the person who provides the treatment. A treatment plan that incorporates isolation shall be evaluated at least once every 2 weeks. Patients who have a recent history of physical aggression may be restrained during transport to or from the facility. Persons who are committed or transferred under s. 51.35(3) or 51.37 or under ch. 971 or 975, or who are detained or committed under ch. 980, and who, while under this status, are transferred to a hospital, as defined in s. 50.33(2), for medical care may be isolated for security reasons within locked facilities in the hospital. Patients who are committed or transferred under s. 51.35(3) or 51.37 or under ch. 971 or 975, or who are detained or committed under ch. 980, may be restrained for security reasons during transport to or from the facility.

2. Patients in the maximum security facility at the Mendota Mental Health Institute may be locked in their rooms during the night shift and for a period of no longer than one hour and 30 minutes during each change of shift by staff to permit staff review of patient needs. Patients detained or committed under ch. 980 and placed in a facility specified under s. 980.065 may be locked in their rooms during the night shift, if they reside in a maximum or medium security unit in which each room is

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equipped with a toilet and sink, or if they reside in a unit in which each room is not equipped with a toilet and sink and the number of patients outside their rooms equals or exceeds the number of toilets in the unit, except that patients who do not have toilets in their rooms must be given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated. Patients in the maximum security facility at the Mendota Mental Health Institute, or patients detained or committed under ch. 980 and placed in a facility specified under s. 980.065, may also be locked in their rooms on a unit-wide or facility-wide basis as an emergency measure as needed for security purposes to deal with an escape or attempted escape, the discovery of a dangerous weapon in the unit or facility or the receipt of reliable information that a dangerous weapon is in the unit or facility, or to prevent or control a riot or the taking of a hostage. A unit-wide or facility-wide emergency isolation order may only be authorized by the director of the unit or facility where the order is applicable or his or her designee. A unit-wide or facility-wide emergency isolation order affecting the Mendota Mental Health Institute must be approved within one hour after it is authorized by the director of the Mendota Mental Health Institute or the director's designee. An emergency order for unit-wide or facility-wide isolation may only be in effect for the period of time needed to preserve order while dealing with the situation and may not be used as a substitute for adequate staffing. During a period of unit-wide or facility-wide isolation, the status of each patient shall be reviewed every 30 minutes to ensure the safety and comfort of the patient, and each patient who is locked in a room without a toilet shall be given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated. Each unit in the maximum security facility at the Mendota Mental Health Institute and each unit in a facility specified under s. 980.065 shall have a written policy covering the use of isolation that ensures that the dignity of the individual is protected, that the safety of the individual is secured, and that there is regular, frequent monitoring by trained staff to care for bodily needs as may be required. The isolation policies shall be reviewed and approved by the director of the Mendota Mental Health Institute or the director's designee, or by the director of the facility specified under s. 980.065 or his or her designee, whichever is applicable.

(j) Have a right not to be subjected to experimental research without the express and informed consent of the patient and of the patient's guardian after consultation with independent specialists and the patient's legal counsel. Such proposed research shall first be reviewed and approved by the institution's research and human rights committee created under sub. (4) and by the department before such consent may be sought. Prior to such approval, the committee and the department shall determine that research complies with the principles of the statement on the use of human subjects for research adopted by the American Association on Mental Deficiency, and with the regulations for research involving human subjects required by the U.S. department of health and human services for projects supported by that agency.

(k) Have a right not to be subjected to treatment procedures such as psychosurgery, or other drastic treatment procedures without the express and informed consent of the patient after consultation with his or her counsel and legal guardian, if any. Express and informed consent of the patient after consultation with the patient's counsel and legal guardian, if any, is required for the use of electroconvulsive treatment.

(L) Have the right to religious worship within the facility if the patient desires such an opportunity and a member of the clergy of the patient's religious denomination or society is available to the facility. The provisions for such worship shall be available to all patients on a nondiscriminatory basis. No individual may be coerced into engaging in any religious activities.

(m) Have a right to a humane psychological and physical environment within the hospital facilities. These facilities shall be designed to afford patients with comfort and safety, to promote dignity and ensure privacy. Facilities shall also be designed to make a positive contribution to the effective attainment of the treatment goals of the hospital.

(n) Have the right to confidentiality of all treatment records, have the right to inspect and copy such records, and have the right to challenge the accuracy, completeness, timeliness or relevance of

information relating to the individual in such records, as provided in s. 51.30.

(o) Except as otherwise provided, have a right not to be filmed or taped, unless the patient signs an informed and voluntary consent that specifically authorizes a named individual or group to film or tape the patient for a particular purpose or project during a specified time period. The patient may specify in such consent periods during which, or situations in which, the patient may not be filmed or taped. If a patient is legally incompetent, such consent shall be granted on behalf of the patient by the patient's guardian. A patient in Goodland Hall at the Mendota Mental Health Institute, or a patient detained or committed under ch. 980 and placed in a facility specified under s. 980.065, may be filmed or taped for security purposes without the patient's consent, except that such a patient may not be filmed in patient bedrooms or bathrooms for any purpose without the patient's consent.

(p) Have reasonable access to a telephone to make and receive telephone calls within reasonable limits.

(q) Be permitted to use and wear his or her own clothing and personal articles, or be furnished with an adequate allowance of clothes if none are available. Provision shall be made to launder the patient's clothing.

(r) Be provided access to a reasonable amount of individual secure storage space for his or her own private use.

(s) Have reasonable protection of privacy in such matters as toileting and bathing.

(t) Be permitted to see visitors each day.

(u) Have the right to present grievances under the procedures established under sub. (5) on his or her own behalf or that of others to the staff or administrator of the treatment facility or community mental health program without justifiable fear of reprisal and to communicate, subject to par. (p), with public officials or with any other person without justifiable fear of reprisal.

(v) Have the right to use his or her money as he or she chooses, except to the extent that authority over the money is held by another, including the parent of a minor, a court-appointed guardian of the patient's estate or a representative payee. If a treatment facility or community mental health program so approves, a patient or his or her guardian may authorize in writing the deposit of money in the patient's name with the facility or program. Any earnings attributable to the money accrue to the patient. The treatment facility or community mental health program shall maintain a separate accounting of the deposited money of each patient. The patient or his or her guardian shall receive, upon written request by the patient or guardian, a written monthly account of any financial transactions made by the treatment facility or community mental health program with respect to the patient's money. If a patient is discharged from a treatment facility or community mental health program, all of the patient's money, including any attributable accrued earnings, shall be returned to the patient. No treatment facility or community mental health program or employee of such a facility or program may act as representative payee for a patient for social security, pension, annuity or trust fund payments or other direct payments or monetary assistance unless the patient or his or her guardian has given informed written consent to do so or unless a representative payee who is acceptable to the patient or his or her guardian and the payer cannot be identified. A community mental health program or treatment facility shall give money of the patient to him or her upon request, subject to any limitations imposed by guardianship or representative payeeship, except that an inpatient facility may, as a part of its security procedures, limit the amount of currency that is held by a patient and may establish reasonable policies governing patient account transactions.

(w)1. Have the right to be informed in writing, before, upon or at a reasonable time after admission, of any liability that the patient or any of the patient's relatives may have for the cost of the patient's care and treatment and of the right to receive information about charges for care and treatment services.

2. If the patient is a minor, if the patient's parents may be liable for the cost of the patient's care and treatment and if the

patient's parents can be located with reasonable effort, the treatment facility or community mental health program shall notify the patient's parents of any liability that the parents may have for the cost of the patient's care and treatment and of their right to receive information under subd. 3., except that a minor patient's parents may not be notified under this subdivision if the minor patient is receiving care under s. 51.47 without the consent of the minor patient's parent or guardian.

3. A patient, a patient's relative who may be liable for the cost of the patient's care and treatment or a patient's guardian may request information about charges for care and treatment services at the treatment facility or community mental health program. If a treatment facility or community mental health program receives such a request, the treatment facility or community mental health program shall promptly provide to the individual making the request written information about the treatment facility's or community mental health program's charges for care and treatment services. Unless the request is made by the patient, the guardian of a patient adjudged incompetent under ch. 880, the parent or guardian of a minor who has access to the minor's treatment records under s. 51.30(5)(b)1. or a person designated by the patient's informed written consent under s. 51.30(4)(a) as a person to whom information may be disclosed, information released under this subdivision is limited to general information about the treatment facility's or community mental health program's charges for care and treatment services and may not include information which may not be disclosed under s. 51.30.

(x) Have the right to be treated with respect and recognition of the patient's dignity and individuality by all employees of the treatment facility or community mental health program and by licensed, certified, registered or permitted providers of health care with whom the patient comes in contact.

(2) A patient's rights guaranteed under sub. (1)(p) to (t) may be denied for cause after review by the director of the facility, and may be denied when medically or therapeutically contraindicated as documented by the patient's physician or licensed psychologist in the patient's treatment record. The individual shall be informed in writing of the grounds for withdrawal of the right and shall have the opportunity for a review of the withdrawal of the right in an informal hearing before the director of the facility or his or her designee. There shall be documentation of the grounds for withdrawal of rights in the patient's treatment record. After an informal hearing is held, a patient or his or her representative may petition for review of the denial of any right under this subsection through the use of the grievance procedure provided in sub. (5) or, alternatively or in addition to the use of such procedure, may bring an action under sub. (7).

(3) The rights accorded to patients under this section apply to patients receiving services in outpatient and day-service treatment facilities, as well as community mental health programs, insofar as applicable.

(4)(a) Each facility which conducts research upon human subjects shall establish a research and human rights committee consisting of not less than 5 persons with varying backgrounds to assure complete and adequate review of research activities commonly conducted by the facility. The committee shall be sufficiently qualified through the maturity, experience and expertise of its members and diversity of its membership to ensure respect for its advice and counsel for safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific activities, the committee shall be able to ascertain the acceptability of proposals in terms of commitments of the facility and federal regulations, applicable law, standards of professional conduct and practice, and community attitudes.

(b) No member of a committee may be directly involved in the research activity or involved in either the initial or continuing review of an activity in which he or she has a conflicting interest, except to provide information requested by the committee.

(c) No committee may consist entirely of persons who are officers, employees or agents of or are otherwise associated with the facility, apart from their membership on the committee.

(d) No committee may consist entirely of members of a single professional group.

(e) A majority of the membership of the committee constitutes a quorum to do business.

(5)(a) The department shall establish procedures to assure protection of patients' rights guaranteed under this chapter, and shall, except for the grievance procedures of the Mendota and Winnebago mental health institutes and the state centers for the developmentally disabled, implement a grievance procedure which complies with par. (b) to assure that rights of patients under this chapter are protected and enforced by the department, by service providers and by county departments under ss. 51.42 and 51.437. The procedures established by the department under this subsection apply to patients in private hospitals or public general hospitals.

(b) The department shall promulgate rules that establish standards for the grievance procedure used as specified in par. (a) by the department, county departments under ss. 51.42 and 51.437 and service providers. The standards shall include all of the following components:

1. Written policies and procedures regarding the uses and operation of the grievance system.

2. A requirement that a person, who is the contact for initiating and processing grievances, be identified within the department and in each county department under ss. 51.42 and 51.437 and be specified by each service provider.

3. An informal process for resolving grievances.

4. A formal process for resolving grievances, in cases where the informal process fails to resolve grievances to the patient's satisfaction.

5. A process for notification of all patients of the grievance process.

6. Time limits for responses to emergency and nonemergency grievances, as well as time limits for deciding appeals.

7. A process which patients may use to appeal unfavorable decisions within the department or county department under s. 51.42 or 51.437 or through the service provider.

8. A process which may be used to appeal final decisions under subd. 7. of the department, county department under s. 51.42 or 51.437 or service provider to the department of health and family services.

9. Protections against the application of sanctions against any complainant or any person, including an employee of the department, county department under s. 51.42 or 51.437 or service provider who assists a complainant in filing a grievance.

(c) Each county department of community programs shall attach a statement to an application for recertification of its community mental health programs or treatment facilities that are operated by or under contract with the county. The statement shall indicate if any complaints or allegations of violations of rights established under this section were made during the certification period immediately before the period of recertification that is requested and shall summarize any complaints or allegations made. The statement shall contain the date of the complaint or allegation, the disposition of the matter and the date of disposition. The department shall consider the statement in reviewing the application for recertification.

(d) No person may intentionally retaliate or discriminate against any patient or employee for contacting or providing information to any official or to an employee of any state protection and advocacy agency, or for initiating, participating in, or testifying in a grievance procedure or in an action for any remedy authorized under this section. Whoever violates this paragraph may be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

(6) Subject to the rights of patients provided under this chapter, the department, county departments under s. 51.42 or 51.437, and any agency providing services under an agreement with the department or those county departments have the right to use customary and usual treatment techniques and procedures in a reasonable and appropriate manner in the treatment of patients who are receiving services under the mental health system, for the purpose of ameliorating the conditions for which the patients were admitted to the

system. The written, informed consent of any patient shall first be obtained, unless the person has been found not competent to refuse medication and treatment under s. 51.61(1)(g) or the person is a minor 14 years of age or older who is receiving services for alcoholism or drug abuse or a minor under 14 years of age who is receiving services for mental illness, developmental disability, alcoholism, or drug abuse. In the case of a minor, the written, informed consent of the parent or guardian is required, except as provided under an order issued under s. 51.13(1)(c) or 51.14(3)(h) or (4)(g). If the minor is 14 years of age or older and is receiving services for mental illness or developmental disability, the written, informed consent of the minor and the minor's parent or guardian is required. A refusal of either a minor 14 years of age or older or the minor's parent or guardian to provide written, informed consent for admission to an approved inpatient treatment facility is reviewable under s. 51.13(1)(c)1. and a refusal of either a minor 14 years of age or older or the minor's parent or guardian to provide written, informed consent for outpatient mental health treatment is reviewable under s. 51.14.

(7)(a) Any patient whose rights are protected under this section who suffers damage as the result of the unlawful denial or violation of any of these rights may bring an action against the person, including the state or any political subdivision thereof, which unlawfully denies or violates the right in question. The individual may recover any damages as may be proved, together with exemplary damages of not less than \$100 for each violation and such costs and reasonable actual attorney fees as may be incurred.

(b) Any patient whose rights are protected under this section may bring an action against any person, including the state or any political subdivision thereof, which willfully, knowingly and unlawfully denies or violates any of his or her rights protected under this section. The patient may recover such damages as may be proved together with exemplary damages of not less than \$500 nor more than \$1,000 for each violation, together with costs and reasonable actual attorney fees. It is not a prerequisite to an action under this paragraph that the plaintiff suffer or be threatened with actual damages.

(c) Any patient whose rights are protected under this section may bring an action to enjoin the unlawful violation or denial of rights under this section and may in the same action seek damages as provided in this section. The individual may also recover costs and reasonable actual attorney fees if he or she prevails.

(d) Use of the grievance procedure established under sub. (5) is not a prerequisite to bringing an action under this subsection.

(7m) Whoever intentionally deprives a patient of the ability to seek redress for the alleged violation of his or her rights under this section by unreasonably precluding the patient from doing any of the following may be fined not more than \$1,000 or imprisoned for not more than 6 months or both:

(a) Using the grievance procedure specified in sub. (5).

(b) Communicating, subject to sub. (1)(p), with a court, government official or staff member of the protection and advocacy agency that is designated under s. 51.62 or with legal counsel.

(8) Any informed consent which is required under sub. (1)(a) to (i) may be exercised by the patient's legal guardian if the patient has been adjudicated incompetent and the guardian is so empowered, or by the parent of the patient if the patient is a minor.

(9) The department shall promulgate rules to implement this section.

(10) No person who, in good faith, files a report with the appropriate examining board concerning the violation of rights under this section by persons licensed, certified, registered or permitted under ch. 441, 446, 450, 455 or 456, or who participates in an investigation of an allegation by the appropriate examining board, is liable for civil damages for the filing or participation.

## APPENDIX C

### HFS 12 CAREGIVER BACKGROUND CHECKS

#### Subchapter I — General Provisions

HFS 12.01 Authority and purpose.  
HFS 12.02 Applicability.  
HFS 12.03 Definitions.

#### Subchapter II — Background Checks

HFS 12.04 Contracting for background checks.  
HFS 12.05 Sanctions.  
HFS 12.06 Determining whether an offense is substantially related to client care.  
HFS 12.07 Reporting background changes and nonclient residency.

HFS 12.08 Armed forces background searches.  
HFS 12.09 Transmittal of background check information.  
HFS 12.10 Maintaining confidentiality of background information disclosure forms.  
HFS 12.11 Supervision pending receipt of caregiver background checks.

#### Subchapter III — Rehabilitation Review

HFS 12.12 Rehabilitation process for persons who have committed certain offenses.

#### Subchapter I — General Provisions

**HFS 12.01 Authority and purpose.** This chapter is promulgated under the authority of s. 48.685 (1) (ag) 1. a., (2) (d), (4), (5) (a), (6) (b) and (c), Stats.; and s. 50.065 (1) (ag) 1. a., (d), (f), (2) (d), (4), (5), (6) (b) and (c), Stats.; and s. 227.11 (2), Stats., to protect from harm clients served by department-regulated programs, children placed in foster homes licensed by county departments of social or human services or private child-placing agencies or children who are being adopted, and children served in day care programs contracted by local school boards under s. 120.13 (14), Stats., by requiring uniform background information screening of persons regulated and persons who are employees of or under contract to regulated entities or who are nonclient residents of regulated entities.

**Note:** Administrative rules governing county certified day care centers appear in ch. DWD 55.

**History:** Cr. Register, August, 2000, No. 536, eff. 9-1-00.

**HFS 12.02 Applicability. (1) SCOPE.** (a) *Persons and agencies affected.* This chapter applies to the department; to applicants for regulatory approval from the department; to persons, agencies and entities that have received regulatory approval from the department; to county department and child-placing agencies that license foster homes and approve applications for adoption home studies; to foster home license applicants and licensees and applicants for an adoption home study; to school boards that establish or contract for daycare programs under s. 120.13 (14), Stats., and to applicants and persons under contract to a school board to operate a day care program under s. 120.13(14), Stats.

(b) *Entities covered.* The entities subject to this chapter are those regulated under: chs. HFS 34, 38, 40, 45, 46, 52, 54, 55, 56, 57, 59, 61, 63, 82, 83, 88, 89, 110, 111, 112, 124, 127, 131, 132, 133, and 134, any other direct client care or treatment program that may be licensed or certified or registered by the department.

**History:** Cr. Register, August, 2000, No. 536, eff. 9-1-00.

**HFS 12.03 Definitions.** In this chapter:

(1) "Adoption home study" means an evaluation of a prospective adoptive family under ch. HFS 51 or 54.

(2) "Agency" means the department, a county department or a school board or a child welfare agency licensed under s. 48.60, Stats., as a child-placing agency.

(3) "Background information disclosure form" means the department's form, HFS 64, on which a person provides certain information concerning the person's background.

(4) "Bar" means, as a noun, that a person is not permitted to receive regulatory approval, or be employed as a caregiver by or under contract with an entity, or to reside as a nonclient at an entity.

(5) "Caregiver" has the meaning specified in s. 48.685 (1) (ag) or 50.065 (1) (ag), Stats., whichever is applicable.

(6) "Client" means a person who receives direct care or treatment services from an entity. For the purposes of this chapter, "client" includes an adopted child for whom an adoption assistance payment is being made under s. 48.975, Stats.

(7) "Contractor" has the meaning specified in ss. 48.685 (1) (ar) and 50.065 (1) (bm), Stats.

(8) "County department" means a county department of social services established under s. 46.215 or 46.22, Stats., or a county department of human services established under s. 46.21 (2m) or 46.23, Stats.

(9) "Department" means the Wisconsin department of health and family services.

(10) "Direct contact" has the meaning specified in ss. 48.685(1) (ar) and 50.065 (1) (br), Stats.

(11) "Entity" has the meaning specified in s. 48.685 (1) (b) or 50.065 (1) (c), Stats., whichever is applicable.

(12) "Foster home" means any facility operated by a person required to be licensed under s. 48.62 (1) (a), Stats., in which care and maintenance are provided for no more than 4 foster children, or, if all are siblings, for no more than 6 children, and also includes a treatment foster home that also provides structured professional treatment by trained individuals, and a home licensed for placement of children for adoption under s. 48.833, Stats., for whom adoption assistance will be provided under s. 48.975, Stats.

(13) "Hospital" means a facility approved as a hospital under s. 50.35, Stats.

(14) "Nonclient resident" has the meaning specified in ss. 48.685 (1) (bm) and 50.065 (1) (cn), Stats.

(15) "Personal care worker agency" means a home health agency licensed under s. 50.49, Stats., and ch. HFS 133 and certified as a personal care worker agency under s. HFS 105.17 (1).

(16) "Regular" means, in terms of direct contact with clients, contact that is scheduled, planned, expected, or otherwise periodic.

(17) "Regulatory approval" means:

(a) For purposes of s. 48.685, Stats., any of the following:

1. Issuance by the department of a license or certification or the continuation or renewal of a license or certification, or approval of a prospective adoptive parent application for a home study.

2. Issuance or renewal by a county department or child-placing agency of a foster home or treatment foster home license under s. 48.62 or 48.75, Stats., including a home licensed for placement of children for adoption under s. 48.833, Stats., for whom adoption assistance will be provided under s. 48.975, Stats., and includes approval of pre-adoptive applicants who contract for a home study with a licensed private child placing agency for approval of a placement of a child for adoption.

**Note:** Administrative rules governing county certified day care centers appear in ch. DWD 55.

3. Approval by a school board under s. 120.13 (14), Stats., of day care services established by or contracted with a day care provider.

(b) For purposes of s. 50.065, Stats., issuance by the department of an entity license, certification, certificate of approval or registration, or approval by the department of the continuation of an entity license, certification, certificate of approval or registration.

(18) "Rehabilitation review" refers to an agency or tribal process where a person who is eligible under s. 48.685 (5) (a) or 50.065 (5), Stats., may seek the removal of a bar from regulatory approval, from employment as a caregiver at or contracting with an entity, or from residency at an entity.

(19) "School board" means the school board or board of school directors in charge of the schools of a school district.

(20) "Serious crime" has the meaning specified in s. 48.685 (1) (c) or 50.065 (1) (e), Stats., whichever is applicable.

(21) "Supportive home care service agency" means a home health agency licensed under s. 50.49, Stats., and ch. HFS 133.

(22) (a) "Treatment foster home" means a family-oriented facility operated by a person or persons required to be licensed under s. 48.62 (1) (b), Stats., in which treatment, care and maintenance are provided for no more than 4 foster children.

(b) "Treatment foster home" includes a placement for adoption under s. 48.833, Stats., of a child for whom adoption assistance will be provided under s. 48.975, Stats., after adoption is finalized.

(c) "Treatment foster home" does not include a shift-staffed facility, except as permitted under s. HFS 38.02 (2) (d).

(23) "Tribal governing body" means an elected tribal governing body of a federally recognized American Indian tribe.

(24) "Tribe" has the meaning specified in ss. 48.685 (1) (e) and 50.065 (1) (g), Stats.

(25) "Under the entity's control" means an entity does all of the following:

(a) Determines whether a person employed by or under contract with the entity who has direct, regular contact with clients served by the entity may provide care, treatment, or other similar support service functions to clients.

(b) Directs or oversees one or more of the following:

1. The policies or procedures the person must follow in performing his or her duties.

2. The conditions under which the person performs his or her duties.

3. The tasks the person performs.

4. The person's work schedule.

5. The supervision or evaluation of the person's work or job performance, including imposing discipline or awarding performance awards.

6. The compensation the person receives for performing his or her duties.

**History:** Cr. Register, August, 2000, No. 536, eff. 9-1-00; correction in (12) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2001, No. 544.

## Subchapter II — Background Checks

### HFS 12.04 Contracting for background checks.

(1) An entity may enter into and shall retain an agreement or contract with any entity identified under s. 48.685 (1) (b) or 50.065(1) (c), Stats., or with any college, or university, including any vocational or technical college or school, or temporary employment agency or other person, to have the entity, school, temporary employment agency, or other person obtain and retain required background information related to caregivers, including contractors, students, or temporary employees, who, as part of their curriculum, must participate in clinical or practicum experiences at an entity.

(2) An entity that enters into an agreement or contract under sub. (1) shall obtain, at a minimum, from the other entity, university, college or technical school, temporary employment agency, or other person contracted with, and shall retain so that it may be promptly retrieved for inspection by the agency, a letter indicating the name or names and social security numbers, if available, of the caregivers, including temporary employees, contractors, or students, listing any convictions learned of during the course of the required background checks, along with any substantiated findings of misconduct, licensure denial or restriction or any other credential limitation found by either the department or the department of regulation and licensing.

**Note:** To obtain a master copy of the HFS – 64 Background Information Disclosure Form, in order to reproduce it, either download the form from the Department's internet web site at [www.dhfs.state.wi.us/caregiver/index.htm](http://www.dhfs.state.wi.us/caregiver/index.htm), or you may request a copy of the form from the agency that regulates your entity.

**Note:** The only persons who may access information maintained by a county department regarding a substantiated report of child abuse or neglect against a person are those identified in s. 49.981 (7), Stats.

**History:** Cr. Register, August, 2000, No. 536, eff. 9-1-00.

**HFS 12.05 Sanctions.** (1) SANCTIONABLE ENTITY ACTIONS. An entity that commits any of the following acts may be subject to any of the sanctions specified in sub. (2):

(a) Hires, employs, or contracts with a caregiver, or permits to reside at an entity a nonclient resident, where the entity knows or should have known the caregiver or nonclient resident is barred under s. 48.685 (4m) (b) or 50.065 (4m) (b), Stats.

(b) Violates any provision of initial background information gathering or periodic background information gathering required by s. 48.685 or 50.065, Stats.

(2) ENTITY SANCTIONS. Any of the following sanctions may be imposed on any entity that commits any of the acts described in sub. (1):

(a) A forfeiture not to exceed \$1,000.

(b) A requirement that the entity submit to the agency a written corrective action plan specifying corrections that will be made to the identified personnel screening practices needing correction and that the entity implement the plan.

(c) At entity expense, attendance at agency-designated personnel screening training or other appropriate training.

(d) Specific conditions or limitations placed on the license, certification or registration or on a school board-issued contract, including denial, revocation, nonrenewal or suspension of regulatory approval issued by the department, or denial, nonrenewal or termination by a school board of a contract with a day care provider under s. 120.13 (14), Stats.

(e) For a person licensed to operate a child welfare agency, shelter care facility, group foster home or day care facility, any sanction or penalty described in s. 48.715, Stats.

(f) A requirement that the entity use, at entity expense, a temporary employment agency for screening and hiring personnel.

(3) SANCTIONABLE INDIVIDUAL ACTIONS. Any person who is required to complete a background information disclosure form and who commits any of the following actions may be subject to any of the sanctions specified in sub. (4):

(a) Fails to complete and submit the background information disclosure form to the appropriate agency or entity.

(b) Knowingly gives false information on or knowingly omits information from the background information disclosure form submitted to an agency or entity.

(c) After submitting a background information disclosure form to an agency or entity, subsequently fails to report any information about a conviction for a crime or other act or offense requested on the background information disclosure form, about a substantiated finding of abuse or neglect or a client or of misappropriation of a client's property, or, in the case of a position for which the person must be credentialed by the department of regulation and licensing, about a licensure denial, restriction, or other license limitation by either the department or the department of regulation and licensing.

(4) INDIVIDUAL SANCTIONS. All of the following sanctions may be imposed by an agency on any person who commits any of the acts described in sub. (3):

(a) A forfeiture not to exceed \$1,000.

(b) Denial or revocation of regulatory approval or the termination of a contract.

(c) Denial or termination of eligibility to reside at the entity.

(d) Special conditions or limitations placed upon the person, including restriction to an off-premises location during business hours or otherwise restricting the person's contact with clients.

**History:** Cr. Register, August, 2000, No. 536, eff. 9-1-00.

**HFS 12.06 Determining whether an offense is substantially related to client care.** To determine whether a crime, delinquency adjudication under s. 48.685 (5m) or 50.065(5m), Stats., or conduct relating to a governmental finding of abuse or neglect of another or of misappropriation of another's property is substantially related to the care of a client, the agency or entity may consider all of the following:

(1) In relation to the job, any of the following:

(a) The nature and scope of the job's client contact.

(b) The nature and scope of the job's discretionary authority and degree of independence in judgment relating to decisions or actions that affect the care of clients.

(c) The opportunity the job presents for committing similar offenses.

(d) The extent to which acceptable job performance requires the trust and confidence of clients or a client's parent or guardian.

(e) The amount and type of supervision received in the job.



(2) In relation to the offense, any of the following:

- (a) Whether intent is an element of the offense.
  - (b) Whether the elements or circumstances of the offense are substantially related to the job duties.
  - (c) Any pattern of offenses.
  - (d) The extent to which the offense relates to vulnerable clients.
  - (e) Whether the offense involves violence or a threat of harm.
  - (f) Whether the offense is of a sexual nature.
- (3) In relation to the person, any of the following:
- (a) The number and type of offenses the person committed or for which the person has been convicted.
  - (b) The length of time between convictions or offenses, and the employment decision.
  - (c) The person's employment history, including references, if available.
  - (d) The person's participation in or completion of pertinent programs of a rehabilitative nature.
  - (e) The person's probation or parole status.
  - (f) The person's ability to perform or to continue to perform the job consistent with the safe and efficient operation of the program and the confidence of the clients served including, as applicable, their parents or guardians.
  - (g) The age of the person on the date of conviction or dates of conviction.

**Note:** A person refused employment or who has had his or her employment terminated and believes he or she may have been discriminated against, may file a complaint under s. 111.335, Stats., with the Equal Rights Division, Department of Workforce Development, P.O. Box 8928, Madison, WI 53708-8928 or telephone 608-266-6860.

**History:** Cr. Register, August, 2000, No. 536, eff. 9-1-00.

**HFS 12.07 Reporting background changes and nonclient residency.** (1) An entity shall include in its personnel or operating policies a provision that requires caregivers to notify the entity as soon as possible, but no later than the person's next working day, when any of the following occurs.

- (a) The person has been convicted of any crime.
- (b) The person has been or is being investigated by any governmental agency for any other act, offense, or omission, including an investigation related to the abuse or neglect, or threat of abuse or neglect, to a child or other client, or an investigation related to misappropriation of a client's property.
- (c) The person has a governmental finding substantiated against them of abuse or neglect of a client or of misappropriation of a client's property.
- (d) In the case of a position for which the person must be credentialed by the department of regulation and licensing, the person has been denied a license, or the person's license has been restricted or otherwise limited.

(2) When any of the following occurs relative to a signatory or other legal party to the entity application for regulatory approval or under which a contract under s. 120.13 (14), Stats., is signed, or relative to a nonclient resident at the entity, an entity shall, as soon as possible, but no later than the regulatory agency's next business day, report the information to the agency that gave regulatory approval, or the school board with which the day care entity contracts under s. 120.13 (14), Stats.

- (a) The person has been convicted of any crime.
- (b) The person has been or is being investigated by any governmental agency for any other act, offense, or omission, including an investigation related to the abuse or neglect, or threat of abuse or neglect, to a child or other client, or an investigation related to misappropriation of a client's property.
- (c) The person has a governmental finding substantiated against them of abuse or neglect of a client or of misappropriation of a client's property.
- (d) In the case of a position for which the person must be credentialed by the department of regulation and licensing, the person has been denied a license, or the person's license has been restricted or otherwise limited.

(3) When a person begins residing at or is expected to reside at an entity, or the signatory for licensure changes, the entity shall, as soon as possible, but no later than the regulatory

agency's next business day, report the residency, expected residency, or signatory change to the agency that gave regulatory approval or to the school board that the day care entity contracts with under s. 120.13(14), Stats., and submit to the regulatory agency a completed background information disclosure form for the new nonclient resident or new signatory.

**History:** Cr. Register, August, 2000, No. 536, eff. 9-1-00.

**HFS 12.08 Armed forces background searches.** If a person who is the subject of a background search under s. 48.685 or 50.065, Stats., served in a branch of the U.S. armed forces, including any reserve component, the agency or entity shall make a good faith effort to obtain the discharge status of that person, either from the discharge papers issued to the person or from the armed forces branch in which the person served. If the discharge status is other than honorable, the agency or entity shall obtain information on the nature and circumstances of the discharge.

**History:** Cr. Register, August, 2000, No. 536, eff. 9-1-00.

**HFS 12.09 Transmittal of background check information.**

(1) When an entity sends a required background information disclosure form to the department under s. 48.685 (3) (a), Stats., the entity shall include in the transmittal all the following:

- (a) Any reason for denial or revocation of a license or denial of an adoption application.
- (b) The date of the license denial or revocation or adoption application denial.

(2) A child-placing agency or county department shall provide the department with written information about each person to whom the child-placing agency or county department denies a license or adoption home study approval for a reason specified in s. 48.685 (4m) (a), Stats., including all the following:

- (a) The reason for denial or revocation of a license or denial of adoption application.
- (b) The date of the license denial or revocation or adoption application denial.

**Note:** Send the information required in subs. (1) and (2) to the Bureau of Regulation and Licensing, Division of Children and Family Services, P. O. Box 8916, 1 West Wilson Street, Madison, WI 53708-8916.

(3) In addition to the persons specified in s. 48.685 (6) (b) 2., Stats., an entity shall send a completed background information disclosure form to the county department for a person who is licensed or an adoptive parent applicant studied by a county department.

(4) In addition to the persons specified in s. 48.685 (6) (b) 3., Stats., an entity shall send a completed background information disclosure form to the child-placing agency for a person who is in a home studied for adoptive parent applicant approval.

**History:** Cr. Register, August, 2000, No. 536, eff. 9-1-00.

**HFS 12.10 Maintaining confidentiality of background information disclosure forms.** Agencies and entities shall retain all required completed department background information forms in a manner that ensures prompt retrieval of the forms for inspection and shall comply with applicable federal and state confidentiality laws.

**History:** Cr. Register, August, 2000, No. 536, eff. 9-1-00.

**HFS 12.11 Supervision pending receipt of caregiver background checks.** Entity supervision required under ss. 48.685 (4m) (c) and 50.065 (4m) (c), Stats., shall include at a minimum periodic direct observation of the person.

**History:** Cr. Register, August, 2000, No. 536, eff. 9-1-00.

### Subchapter III — Rehabilitation Review

**HFS 12.12 Rehabilitation process for persons who have committed certain offenses.** (1) GENERAL PROVISIONS.

(a) An agency shall conduct rehabilitation reviews as described in this section for persons who are eligible to receive rehabilitation review under this section for any of the following:

- 1. Entities the agency regulates.
- 2. Persons an entity employs.
- 3. Persons an entity contracts with.
- 4. Nonclient residents of an entity.

(b) 1. A tribal governing body may conduct rehabilitation reviews under ss. 48.685 (5) and 50.065 (5), Stats., if a plan submitted under s. 48.685 (5d) or 50.065 (5d), Stats., has been approved by the department.

## APPENDIX C

2. Tribes desiring to conduct rehabilitation reviews shall send a rehabilitation review plan required under ss. 48.685 (5d) and 50.065 (5d), Stats., to the department.

**Note:** Send rehabilitation review plans to the Office of Legal Counsel, Department of Health and Family Services, P.O. Box 7850, 1 West Wilson St., Rm 651, Madison, WI 53707-7850.

**(2) ELIGIBILITY TO REQUEST REHABILITATION REVIEW.** (a) Any person who is ineligible under s. 50.065 (4m) (a) or (b), or 48.685(4m) (a) or (b), Stats., to receive regulatory approval, to be employed as a caregiver, or to contract with or reside at an entity, may request a rehabilitation review if the person meets both of the following conditions:

1. The person has not requested a rehabilitation review for a similar type of regulatory approval, job function or nonclient resident status within the preceding year. In this subdivision, "similar" means comparable regulatory approval, or a comparable job function or activity.

**Note:** Examples of "similarity" and "comparability" are positions that require a comparable level of direct contact with children; a comparable level of unsupervised client access; a previous review involved family day care and the applicant is seeking licensing for group day care; or the applicant sought a group home license and now is seeking a child-caring institution license.

2. If the person is a foster home license applicant under s. 48.62, Stats., or an applicant for an adoption home study, the person has not been convicted of a serious crime under s. 48.685 (5)(bm) 1., 2. or 3., Stats., another crime listed in section III of the appendix that results in a permanent bar, or a similar serious crime in another jurisdiction or, if the person was convicted of a crime under s. 48.685 (5) (bm) 4., Stats., the crime was committed more than 5 years before the background check was requested.

(b) If a person is eligible to request a rehabilitation review, the agency or tribe from which the person is seeking regulatory approval, or the entity with whom the person is seeking employment as a caregiver or a contract, or where the person wishes to reside shall give the person information on rehabilitation review eligibility criteria and on how to obtain the rehabilitation review request form.

**Note:** To obtain a master copy of the Department's Rehabilitation Review Request Form (EXS-263) in order to reproduce it, either download the form from the Department's internet site at [www.dhfs.state.wi.us/caregiver/index.htm](http://www.dhfs.state.wi.us/caregiver/index.htm), or request a copy of the form from, as appropriate, the agency that regulates the entity or from the entity.

**(3) INITIATING A REHABILITATION REVIEW REQUEST.** To request a rehabilitation review, an eligible person shall do all of the following:

(a) Obtain a rehabilitation review request form developed by the department or applicable tribe and submit the completed form to the agency that regulates the entity, or to the applicable tribe, or for day care programs established under s. 120.13 (14), Stats., to the school board.

(b) Submit any supporting documents and information required by the applicable rehabilitation review request form to the same agency, tribe, or school board.

**(4) PROCESSING REHABILITATION REVIEW REQUESTS.** (a) *Rehabilitation review panel.* When an eligible person has filed a complete rehabilitation review request form along with all required additional and supporting information, the applicable agency, tribe, or school board shall appoint a review panel of at least 2 persons to review the information submitted. The panel may request additional information from the person or from other agencies or persons familiar with the person requesting the review.

(b) *Time frame.* If the application form and any requested supporting materials are not complete within 90 days of the date the application is submitted, and the person requesting the review does not have good cause for the failure to submit a complete application form or supporting materials, the rehabilitation approval shall be denied.

(c) *Requester appearance.* The person requesting the rehabilitation review shall have an opportunity to appear before

the review panel to answer any questions the panel members may have.

(d) *Rehabilitation decision formulation and factors.* After reviewing the information obtained, the review panel shall decide whether the person has demonstrated, by clear and convincing evidence, that the person is rehabilitated for purposes of receiving regulatory approval, employment as a caregiver, or contracting with or residing at an entity. The panel shall consider at least the following factors, as applicable:

1. Personal reference checks and comments from employers, persons, and agencies familiar with the applicant and statements from therapists, counselors and other professionals.

2. Evidence of successful adjustment to, compliance with or proof of successful completion of parole, probation, incarceration or work release privileges.

3. Proof that the person has not had subsequent contacts with law enforcement agencies leading to probable cause to arrest or evidence of noncompliance leading to investigations by other regulatory enforcement agencies.

4. Any pending or existing criminal or civil arrest warrants, civil judgments or other legal enforcement actions or injunctions against the person.

5. Any aggravating or mitigating circumstances surrounding the crime, act or offense.

6. Evidence of rehabilitation, such as public or community service, volunteer work, recognition by other public or private authorities for accomplishments or efforts or attempts at restitution, and demonstrated ability to develop positive social interaction and increased independence or autonomy of daily living.

7. The amount of time between the crime, act or offense and the request for rehabilitation review, and the age of the person at the time of the offense.

8. Whether the person is on the sexual offender registry under s. 301.45, Stats., or on a similar registry in another jurisdiction.

9. A victim's impact statement, if appropriate.

10. Employment history, including evidence of acceptable performance or competency in a position and dedication to the person's profession.

11. The nature and scope of the person's contact with clients in the position requested.

12. The degree to which the person would be directly supervised or working independently in the position requested.

13. The opportunity presented for someone in the position to commit similar offenses.

14. The number, type and pattern of offenses committed by the person.

15. Successful participation in or completion of recommended rehabilitation, treatment or programs.

16. Unmet treatment needs.

17. The applicant's veracity.

**(5) REHABILITATION DECISIONS.** (a) *Review panel decision.* The review panel shall decide whether to approve, defer, or deny rehabilitation approval, and shall issue a written decision to that effect, as follows:

1. If the review panel finds sufficient evidence to support rehabilitation approval, the decision shall indicate, as applicable, whether the person is eligible for regulatory approval, employment as a caregiver, or contracting with or residency at an entity. The decision shall describe the scope of the rehabilitation approval and state any conditions or limitations placed on the approval, such as whether the approval is only for employment doing certain job functions or the eligibility for regulatory approval is only to operate certain entity types.

2. If the review panel decides to defer a rehabilitation decision, the panel decision shall state the reasons for the deferral. Unless otherwise agreed to by the requester, the panel may defer a final decision for a period of not more than 6 months from the initial decision date.

3. If the review panel decides to deny approval of the rehabilitation request, the decision shall explain the reasons for the denial and inform the requester that he or she may appeal the decision as described in s. 48.685 (5c) or 50.065 (5c), Stats., as applicable, by filing a written request for review of the decision within 10 days of receipt.

**Note:** Pursuant to s. 48.685 (5c), Stats., or 50.065 (5c), Stats., submit an appeal to the following, as appropriate: 1. To appeal a Department denial of a rehabilitation approval, send the appeal request to the Department of Health and Family Services, Office of Legal Counsel, P.O. Box 7850, Madison, WI 53707-7850. 2. To appeal a school board denial of a rehabilitation approval, send the appeal request to the Superintendent of the Department of Public Instruction, 125 South Webster St., Madison, WI 53703; or call 608-266-3390. 3. To appeal a county denial of a rehabilitation approval, send the appeal request to the appropriate county. When any of the preceding rehabilitation appeals are denied, a further appeal is available under ch. 227, Stats.

Send a request for a ch. 227, Stats., hearing to appeal any of the preceding Department, Department of Public Instruction or county denials of rehabilitation appeals to the Division of Hearings and Appeals, P. O. Box 7875, Madison, WI 53707-7875. The request may be delivered in person to that office at 5005 University Avenue, Suite 201, Madison, Wisconsin.

**Note:** Any person who is listed in the Department's caregiver misconduct registry under ch. HFS 13 as having a substantiated finding of abuse or neglect of a client or misappropriation of a client's property as the result of an action the person took while working as a nurse aide in a federally certified nursing home or intermediate care facility for persons with mental retardation (ICF/MR) is permanently prohibited from being employed, in any capacity, in a federally-certified nursing home or a federally-certified ICF/MR. If such a person obtains a rehabilitation approval, the person is eligible to be considered for regulatory approval, for employment as a caregiver, or for non-client residency at or contracting with other entities covered by ss. 50.065 and 48.685, Stats. See 42 CFR 483.13 and 483.420 for federal regulations relating to nurse aides.

(b) *Burden of proof.* A person who appeals under par. (a) 3. shall bear the burden of proving, by a preponderance of the evidence, that the agency or tribe abused its discretion in deciding that the person did not show sufficient evidence to support rehabilitation approval.

(c) *Review panel decision distribution.* The review panel shall send its decision to the requester and a copy, if appropriate, to the entity. If the agency conducting the rehabilitation review is other than the department or a tribe, the review panel shall also, within 10 days of sending its decision, send a completed copy of the department's required reporting form regarding any rehabilitation decision to the department. If the entity conducting the rehabilitation review is a tribe, the review panel shall also send a copy of the decision to the same address accompanied by a copy of the requester's application materials.

**Note:** Rehabilitation decisions should be addressed to the Office of Legal Counsel, Department of Health and Family Services, P. O. Box 7850, 1 W. Wilson St., Room 651, Madison, WI 53707-7850.

(d) *Maintaining rehabilitation decision documentation.* The review panel shall maintain a file containing a copy of the original written decision and any decisions from filed appeals that may result. The agency or tribe shall maintain in the file the rehabilitation review request and all materials or information obtained or notes made as part of the rehabilitation review decision.

#### (6) REHABILITATION APPROVAL COMPLIANCE AND WITHDRAWALS.

(a) *Approval conditions.* A person who receives rehabilitation approval shall comply with all conditions and limitations imposed with that approval.

(b) *Rehabilitation approval violation--mandatory withdrawal.* An agency or tribe that has granted a person a rehabilitation approval shall withdraw the approval if the agency or tribe learns that the person is no longer eligible under s. 50.065 (4m) (a) or (b), or 48.685 (4m) (a) or (b), Stats., for regulatory approval, to be employed as a caregiver, or to contract with or reside at an entity.

(c) *Rehabilitation approval violation--summary suspension.* An agency or tribe that granted a person a rehabilitation

approval may immediately temporarily rescind the rehabilitation approval when the agency or tribe has knowledge that the person has done either of the following:

1. The person has failed to comply with or abide by any conditions or limitations imposed with the rehabilitation approval.

2. The person knowingly submitted false information or withheld pertinent information relevant to the rehabilitation request that otherwise could or would have affected the review panel's decision to grant the rehabilitation approval.

(d) *Informing agencies or tribes.* An agency, entity or tribe other than the agency or tribe that granted a rehabilitation approval, that becomes aware that any person has violated his or her rehabilitation approval under par. (b) or (c), shall inform the agency or tribe that granted the approval, of the violation.

(e) *Review of summary suspensions.* 1. Within 10 working days of temporarily rescinding a rehabilitation approval under par. (c), the approving agency or tribe shall determine whether the new information related to an approval violation under par. (c) is valid and represents a risk of harm to the client. If the new information is valid and does represent a risk of harm to the client, the approving agency or tribe shall withdraw the rehabilitation approval, thereby re-imposing, as applicable, the person's bar from regulatory approval, from employment as a caregiver or from contracting with or residing at an entity.

2. An agency, entity, or tribe, as applicable, that determines the new information related to an approval violation under par. (c) represents a risk of harm to a client shall also immediately take appropriate measures to protect clients until any appeal filed under par. (g) is exhausted. Appropriate measures may include a repeal of regulatory approval, termination of employment as a caregiver or of approval to reside at an entity, contract termination, reassigning the person away from duties involving direct regular contact with clients or placing the person on temporary leave.

(f) *Withdrawal decisions.* When an agency or tribe withdraws a rehabilitation approval, it shall issue a written decision to that effect. The decision shall explain the reasons for the withdrawal and inform the requester whether he or she may appeal under par. (g).

(g) *Appeal rights.* Any person who has his or her rehabilitation approval withdrawn under par. (c) may file an appeal of this decision as provided in sub. (5) (a).

(h) *Withdrawal reporting.* When an agency or tribe that granted a rehabilitation approval withdraws the approval, and the withdrawal results in a bar to regulatory approval, to eligibility to work as a caregiver, or to contracting with or residing at an entity, the approving agency or tribe shall immediately report the withdrawal to the subunit of the department responsible for collecting this information.

**Note:** Send reports of withdrawn rehabilitation approval to: Office of Legal Counsel, Department of Health and Family Services, P. O. Box 7850, 1 West Wilson Street, Room 651, Madison, WI 53707-7850.

(7) **SCOPE OF AGENCY OR TRIBE REHABILITATION APPROVAL.** (a) *Agency approval limitations.* An agency may grant rehabilitation approval only within the scope of its regulatory authority. The approval applies to all types of entities, job activities and functions the agency regulates, unless the agency specifies otherwise in the form of limitations or conditions expressed in the written rehabilitation approval decision.

(b) *Tribe approval limitations.* A tribe may only grant rehabilitation approvals within the scope of its own employment, contracting, or licensing authority.

(c) *Rehabilitation approval transfers.* 1. When an agency, tribe, or entity learns from the department's background information disclosure form or in any other way that an applicant for regulatory approval, for employment as a caregiver, or for a contract with or permission to reside at an entity has had a rehabilitation review, the agency, tribe, or entity shall request from the rehabilitation review agency or tribe a copy of the rehabilitation review decision. If the rehabilitation review decision was an approval, the agency, tribe or entity shall determine whether the approval may be applied to the regulatory approval, employment as a caregiver, or contract with or residency at an entity that the applicant currently seeks.

2. Except as specified in subd. 3., an agency, entity, or tribe may review and accept a rehabilitation granted to a person by

another agency or tribe if the receiving agency or tribe determines both of the following:

- a. The crime, act, or offense that required the person to request rehabilitation review is not substantially related to the person's job duties.

- b. Any limitations or conditions imposed with the rehabilitation approval continue to be able to be met.

3. No rehabilitation approval granted by a tribe may be transferred outside of the tribe's employment or contracting authority.

4. Before transferring a rehabilitation approval under subd. 1., an agency, tribe, or entity shall verify with the department that the applicant has had a rehabilitation review, and if so, the date and status of that review and whether any reason other than the one the applicant reported on the background information disclosure form exists that requires the applicant to request a rehabilitation review.

5. If the decision of the agency or tribe that conducted the rehabilitation review is to deny approval of transferring the rehabilitation approval, the agency, entity, or tribe shall determine whether the applicant for regulatory approval, for employment as a caregiver, or for contracting with or residency at an entity is eligible to seek another rehabilitation review under sub. (2), and if so, shall inform the person of his or her eligibility.

**Note:** Examples of circumstances in which approvals may or may not be transferable include the following:

1. An approval to be a foster parent by one county or child-placing agency is not, unless approved by the other county or child-placing agency, transferable to the other county or child-placing agency.

2. An approval by the department for a person to work as a shipping clerk in a hospital or nursing home would be transferable to another entity or job function or activity regulated under ch. 50, Stats., as long as limitations or conditions, if any, imposed with the rehabilitation approval are able to be met.

3. A rehabilitation approval for employment at a children's day care or a child caring institution is not transferable to a hospital or nursing home or vice versa.

4. A rehabilitation approval is not transferable from a group day care center to a family day care center if the department's rehabilitation approval imposed limits or conditions.

5. A rehabilitation approval is transferable from one department-regulated child care residential setting to another as long as any limitations or conditions can be met

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**OFFENSES AFFECTING CAREGIVER ELIGIBILITY**  
**SEPTEMBER, 2000**

**INTRODUCTION**

This document lists Wisconsin crimes and other offenses that the Wisconsin State Legislature, under the Caregiver Law, ss. 48.685 and 50.065, Stats., has determined either require rehabilitation review approval before a person may receive regulatory approval, may work as a caregiver, may reside as a nonclient resident at or contract with an entity, or that act to permanently bar a person from receiving regulatory approval to be a foster parent.

**Note: This table reflects changes in the caregiver law made by 1999 Wisconsin Act 9.**

If a person has been convicted of a crime in another state or jurisdiction, the entity or regulatory agency must locate on the table below the Wisconsin crime that is identical or most similar to the crime for which the person was convicted and apply the consequence identified. This instruction also applies if the person was convicted in Wisconsin, but the statute number or crime title has been changed or amended. For example, convictions under Chapter 961, the Uniform Controlled Substances Act, were previously convictions under Chapter 161.

Notwithstanding s. 111.335, Stats., ss. 48.685 (5m) and 50.065 (5m), Stats., permit a regulatory agency to deny regulatory approval or an entity to refuse to employ, contract with or permit to reside at the entity a person whom the regulatory agency or entity determines has been convicted of a crime that is “substantially related” to the care of a client. The agency or entity may review a conviction to make that determination when: (a) The person has been convicted in Wisconsin or another state or jurisdiction of any crime that is not listed in this appendix; or (b) The person has been convicted of a crime that is listed in part III. of this appendix for foster care purposes only.

Under the Caregiver Law, current limitations on a person’s professional credentials may limit the person’s eligibility for employment or licensure in a position for which the person must be credentialed by the department of regulation and licensing.

If a Background Information Disclosure form, a caregiver background check, or any other information shows that a person was convicted of any of the offenses immediately below within 5 years before the information was obtained, the department, county department, child welfare agency, school board, or entity, as applicable, shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and judgment of conviction relating to that conviction.

940.19 (1) Misdemeanor battery  
940.195 Battery to an unborn child  
940.20 Battery, special circumstances  
941.30 Reckless endangerment  
942.08 Invasion of privacy  
947.01 Disorderly conduct  
947.013 Harassment

<b>I. Entities and Programs Serving Only Persons 18 Years of Age or Older</b>	
CONVICTIONS	
Regulatory approval, employment as a caregiver, and nonclient residency at or contracting with an entity are prohibited until rehabilitation approval is received, for all programs and entities that serve only clients 18 years of age or older.	
Wis. Stats.	Crime
940.01	First degree intentional homicide
940.02	1st degree reckless homicide
940.03	Felony murder
940.05	2nd degree intentional homicide
940.12	Assisting suicide
940.19 (2) through (6)	Battery (felony)
940.22 (2) or (3)	Sexual exploitation by therapist; duty to report
940.225 (1), (2), or (3)	1st, 2nd, or 3rd degree sexual assault
940.285	Abuse of vulnerable adults (misdemeanor or felony)
940.29	Abuse of residents of a penal facility
940.295	Abuse or neglect of patients and residents (misdemeanor or felony)
948.02 (1)	1st degree sexual assault of a child
948.025	Repeated acts of sexual assault of a child
948.03 (2) (a)	Physical abuse of a child – intentional – cause great bodily harm
OTHER OFFENSES	
---	Finding by a governmental agency of neglect or abuse of a client, or of misappropriation of a client's property
---	Finding by a governmental agency of child abuse or neglect
<b>II. Entities and Programs Serving Any Clients Under the Age of 18</b>	
CONVICTIONS	
Regulatory approval, employment as a caregiver, and nonclient residency at and contracting with an entity are prohibited until rehabilitation approval is received, for all entities and programs that serve any clients who are under the age of 18. (For additional federal foster care bars, see part III. below.)	
Wis. Stats.	Crime
940.01	First degree intentional homicide
940.02	1st degree reckless homicide
940.03	Felony murder
940.05	2nd degree intentional homicide
940.12	Assisting suicide
940.19 (2) through (6)	Battery (felony)
940.22 (2) or (3)	Sexual exploitation by therapist; duty to report
940.225 (1), (2), or (3)	1st, 2nd, or 3rd degree sexual assault
940.285	Abuse of vulnerable adults (misdemeanor or felony)
940.29	Abuse of residents of a penal facility
940.295	Abuse or neglect of patients & residents (misdemeanor or felony)
948.02 (1) or (2)	1st or 2nd degree sexual assault of a child
948.025	Repeated acts of sexual assault of same child
948.03 (2) (a), (b), or (c)	Physical abuse of a child – intentional causation of bodily harm
948.05	Sexual exploitation of a child
948.055	Causing a child to view or listen to sexual activity
948.06	Incest with a child
948.07	Child enticement
948.08	Soliciting a child for prostitution
948.11 (2)(a) or (am)	Exposing child to harmful material or harmful descriptions or narrations (felony)
948.12	Possession of child pornography
948.13	Child sex offender working with children
948.21 (1)	Neglect of a child – resulting in death (felony)
948.30	Abduction of another's child; constructive custody
OTHER OFFENSES	
---	Finding by a governmental agency of neglect or abuse of a client, or of misappropriation of a client's property
---	Finding by a governmental agency of child abuse or neglect
<b>III. Foster Care</b>	
CONVICTIONS	
By federal or state law, for <b>Foster Homes and Treatment Foster Homes</b> , regulatory approval, employment as a caregiver, and nonclient residency at and contracting with an entity are barred as follows:	
Permanent bar =	Conviction acts as permanent bar.

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Spouse =	Permanent bar applies when spouse was the victim in the offense.
5 years =	Bar is for 5 years from time crime committed.
Spouse / 5 years / R =	If spouse was the victim, bar is permanent. In other cases, bar is for 5 years from time crime committed; then must show rehabilitation.
Spouse / 5 years =	If spouse was the victim, bar is permanent. In other cases, bar is for 5 years from time crime committed.
Bar w/ rehab =	Regulatory approval, employment as a caregiver, and nonclient residency at and contracting with an entity are barred until rehabilitation approval is received.

Wis. Stats.	Crime	Federal law / Foster Care Bar
940.01	First degree intentional homicide	Permanent bar
940.02	1st degree reckless homicide	Permanent bar
940.03	Felony murder	Permanent bar
940.05	2nd degree intentional homicide	Permanent bar
940.06	2nd degree reckless homicide	Permanent bar
940.12	Assisting suicide	Bar w/ rehab
940.19 (2) through (6)	Battery (felony)	Spouse / 5 years / R
940.20	Battery – special circumstances	5 years
940.20 (1) or (1m)	Battery – special circumstances	Spouse
940.203	Battery or threat to judge	5 years
940.205	Battery or threat to a Department of Revenue employee	5 years
940.207	Battery or threat to a Department of Commerce or DWD employee	5 years
940.21	Mayhem	Permanent bar
940.22 (2) or (3)	Sexual exploitation by therapist; duty to report	Bar w/ rehab
940.225 (1), (2), or (3)	1st, 2nd, or 3rd degree sexual assault	Permanent bar
940.23	Reckless injury	Permanent bar
940.285	Abuse of vulnerable adults (misdemeanor or felony)	Bar w/ rehab
940.29	Abuse of residents of a penal facility	Bar w/ rehab
940.295	Abuse or neglect of patients or residents (misdemeanor or felony)	Bar w/ rehab
940.305	Taking hostages	Permanent bar
940.31	Kidnapping	Permanent bar
941.20 (2) or (3)	Endangers safety by use of a dangerous weapon	Permanent bar
941.21	Disarming a peace officer	Permanent bar
943.10(2)	Burglary while armed	Permanent bar
943.23 (1g), (1m) or (1r)	Operating motor vehicle without owner's consent (OMVWOC)	Permanent bar
948.02 (1), (2), (3), or (3m)	1st or 2nd degree sexual assault of a child; failure to act; penalty enhancement	Permanent bar
948.025	Repeated acts of sexual assault of a child	Permanent bar
948.03 (2), (3), or (4)	Physical abuse of a child	Permanent bar
948.04	Causing mental harm to a child	Permanent bar
943.32 (2)	Robbery with dangerous weapon	Permanent bar
948.05	Sexual exploitation of a child	Permanent bar
948.055	Causing a child to view or listen to sexual activity	Permanent bar
948.06	Incest with a child	Permanent bar
948.07	Child enticement	Permanent bar
948.08	Soliciting a child for prostitution	Permanent bar
948.095	Sexual assault of student by school staff	Permanent bar
948.11 (2)(a) or (am)	Exposing child to harmful material or harmful descriptions or narrations (felony)	Permanent bar
948.12	Possession of child pornography	Permanent bar
948.13	Child sex offender working with children	Permanent bar
948.20	Abandonment of a child	Permanent bar
948.21 (1)	Neglect of a child – resulting in death (felony)	Permanent bar
948.22	Failure to support (felony)	Permanent bar
948.23	Concealing death of a child	Permanent bar
948.24	Unauthorized placement for adoption	Permanent bar
948.30	Abduction of another's child; constructive custody	Permanent bar
948.31	Interference with custody by parent or others	Permanent bar
948.35	Solicitation of a child to commit a felony	Permanent bar
948.36	Use of a child to commit a class A felony	Permanent bar
948.40	Contributing to the delinquency of a minor (felony)	Permanent bar

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948.51	Hazing (felony)	Permanent bar
948.60	Possession of a dangerous weapon by a person under 18 (felony)	Permanent bar
948.605 (3)	Gun-free school zones; discharge of firearm in a school zone (felony)	Permanent bar
948.61	Dangerous weapons other than firearms on school premises (felony)	Permanent bar
948.62	Receiving stolen property from a child (felony)	Permanent bar
---	<b>All other Chapter 948 crimes that are felonies</b>	<b>Permanent bar</b>
961.41 (1)	Manufacture, distribution or delivery (felony)	5 years
961.41 (1m)	Possession with intent to manufacture, distribute, or deliver (felony)	5 years
961.41 (3g)	Possession (felony)	5 years
961.43 (1)(a)	Acquire or obtain possession of controlled substances by fraud, misrepresentation, or forgery, deception, or subterfuge (felony)	5 years
961.43 (1)(b)	To possess/make a counterfeit substance or to duplicate the appearance, packaging, form or label of a controlled substance (felony)	5 years
961.455	Using a child for illegal drug distribution or manufacturing purposes (felony)	5 years
961.46	Distribution to persons under 18 (felony)	5 years
961.465	Distribution to prisoners	5 years
961.49	Distribution of or possession with intent to deliver at or near certain places	5 years
961.492	Distribution of or possession with intent to deliver on public transit (felony)	5 years
---	<b>All other ch. 961 offenses that are felonies</b>	<b>5 years</b>
<b>OTHER OFFENSES</b>		
---	Finding by a governmental agency of neglect or abuse of a client, or of misappropriation of a client's property Bar w/ rehab	
---	Finding by a governmental agency of child abuse or neglect Bar w/ rehab	



## APPENDIX D

### HFS 92 CONFIDENTIALITY OF TREATMENT RECORDS

HFS 92.01 Introduction.  
 HFS 92.02 Definitions.  
 HFS 92.03 General requirements.  
 HFS 92.04 Disclosure without informed consent.  
 HFS 92.05 Patient access to treatment records.  
 HFS 92.06 Minors and incompetents.

HFS 92.07 Privileged communications.  
 HFS 92.08 Criminal commitments.  
 HFS 92.09 Grievance procedure.  
 HFS 92.10 Discipline of employees.  
 HFS 92.11 Employee orientation.  
 HFS 92.12 Retention periods.  
 HFS 92.13 Certification of compliance.

**Note:** Chapter HSS 92 was renumbered chapter HFS 92 under s. 13.93(2m)(b)1., Stats., and corrections made under s. 13.93(2m)(b)6. and 7., Stats., Register, September, 1999, No. 525.

**HFS 92.01 Introduction. (1) SCOPE.** This chapter applies to all records of persons who are receiving treatment or who at any time received treatment for mental illness, developmental disabilities, alcohol abuse or drug abuse from the department, a board established under s. 46.23, 51.42 or 51.437, Stats., or treatment facilities and persons providing services under contract with the department, a board or a treatment facility whether the services are provided through a board or not. Private practitioners practicing individually who are not providing services to boards are not deemed to be treatment facilities and their records are not governed by this chapter.

**(2) STATUTORY AUTHORITY.** This chapter is promulgated pursuant to s. 51.30(12), Stats., which directs the department to promulgate rules to implement s. 51.30, Stats.

**History:** Cr. Register, May, 1984, No. 341, eff. 6-1-84.

**HFS 92.02 Definitions.** In this chapter:

**(1) "Board"** means the community board established under s. 46.23, 51.42 or 51.437, Stats.

**(a) "51-board"** means a community board established under s. 51.42 or 51.437, Stats.

**(b) "Human services board"** means a combined board established under s. 46.23, Stats.

**(2) "Court order"** means a lawful order of a court of competent jurisdiction.

**(3) "Department"** means the department of health and family services.

**(4) "Director"** has the meaning designated in s. 51.01(6), Stats.

**(5) "Discharge"** has the meaning designated in s. 51.01(7), Stats.

**(6) "Inpatient facility"** has the meaning designated in s. 51.01(10), Stats.

**(7) "Patient"** means any individual who is receiving or who at any time has received services for mental illness, developmental disabilities, alcoholism or drug dependence from the department, a board, a treatment facility, or from persons providing services under contract to the department, a board or a treatment facility.

**(8) "Program director"** means the administrative director appointed by the board.

**(9) "Pupil records"** has the meaning designated in s. 118.125(1)(d), Stats.

**(10) "Qualified staff"** means only those board staff or department staff who require confidential information for a valid reason connected with their assignment in the administration of services provided by the board or department.

**(11) "Service provider"** means a person who provides services under contract to the department, a board or a treatment facility, including any employee, consultant, volunteer, agency or organization providing any assessment, treatment or other service or rendering any consultation or opinion regarding any patient assessment, need for service or course of treatment, whether as a contractor, subcontractor or in any other capacity.

**(12) "Somatic treatment"** means treatment by physical means.

**Note:** Somatic treatments include administration of medications, psychosurgery and electroconvulsive shock.

**(13) "Treatment"** has the meaning designated in s. 51.01(17), Stats., namely, those psychological, educational, social, chemical, medical or somatic techniques designed to bring about rehabilitation of a mentally ill, alcoholic, drug dependent or developmentally disabled person.

**(14) "Treatment director"** has the meaning designated in s. 51.01(18), Stats., except that in a hospital as defined under s. 50.33(2)(a), Stats., the treatment director is the patient's primary physician.

**(15) "Treatment facility"** has the meaning designated in s. 51.01(19), Stats., namely, any publicly or privately operated facility or unit of a facility providing treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons, including but not limited to inpatient and outpatient treatment programs and rehabilitation programs.

**(16) "Treatment records"** has the meaning designated in s. 51.30(1)(b), Stats., namely, all records concerning individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism, or drug dependence which are maintained by the department, by boards and their staffs, and by treatment facilities. "Treatment records" include written, computer, electronic and microform records, but do not include notes or records maintained for personal use by an individual providing treatment services for the department, a board, or a treatment facility if the notes or records are not available to others.

**History:** Cr. Register, May, 1984, No. 341, eff. 6-1-84.

**HFS 92.03 General requirements. (1) TREATMENT RECORDS.** (a) All treatment records or spoken information which in any way identifies a patient are considered confidential and privileged to the subject individual.

(b) If notes or records maintained for personal use are to be made available to other persons, they shall be placed in the treatment record, become part of that record and be governed by this chapter.

(c) The department and every board, treatment facility and service provider shall designate in writing one or more persons to serve as record custodians.

(d) The department and every board, treatment facility and service provider shall develop a notice describing the agency's treatment record access procedures. The notice shall be prominently displayed and made available for inspection and copying.

(e) Information requests shall be filled as soon as practicable. If a request is denied, specific reasons shall be given for denying the request.

(f) No personally identifiable information contained in treatment records may be released in any manner, including oral disclosure, except as authorized under s. 51.30, Stats., this chapter or as otherwise provided by law.

(g) Whenever requirements of federal law regarding alcoholism and drug dependence services in 42 CFR Part 2 require restrictions on the disclosure of treatment records greater than the restrictions required by this section, the federal requirements shall be observed.

(h) No personally identifiable information in treatment records may be re-released by a recipient of the treatment record unless re-release is specifically authorized by informed consent of the subject individual, by this chapter or as otherwise required by law.

(i) Any disclosure or re-release, except oral disclosure, of confidential information shall be accompanied by a written statement which states that the information is confidential and disclosure without patient consent or statutory authorization is prohibited by law.

(j) Members and committees of boards shall not have access to treatment records. In meetings of boards and board committees, the program directors shall ensure that patient

identities are not revealed or made obvious by description of particular patient situations.

(k) All treatment records shall be maintained in a secure manner to ensure that unauthorized persons do not have access to the records.

(L) Pupil records of minor patients in educational programs within treatment facilities, which are disclosed pursuant to s. 118.125, Stats., shall not contain any information from other treatment records unless there is specific informed consent for release of that information as required under s. HFS 92.06.

(m) No treatment record information may be released to a person previously unknown to the agency unless there is reasonable assurance regarding the person's identity.

(n) Whenever information from treatment records is disclosed, that information shall be limited to include only the information necessary to fulfill the request.

(o) Any request by a treatment facility for written information shall include a statement that the patient has the right of access to the information as provided under ss. HFS 92.05 and 92.06.

(p) The conditions set forth in this section shall be broadly and liberally interpreted in favor of confidentiality to cover a record in question.

**Note:** If a person requesting information does not qualify for it under the section cited in this chapter, other sections should be reviewed to determine if the requester qualifies under another section.

**(2) DISCLOSURE OF PATIENT STATUS IN RESPONSE TO INQUIRIES.**

(a) No person may disclose information or acknowledge whether an individual has applied for, has received or is receiving treatment except with the informed consent of the individual, as authorized under s. 51.30(4)(b), Stats., or as otherwise required by law and as governed by this subsection.

(b) The department and each board and treatment facility shall develop written procedures which include a standard, noncommittal response to inquiries regarding whether or not a person is or was receiving treatment. All staff who normally deal with patient status inquiries shall be trained in the procedures.

**(3) INFORMED CONSENT.** Informed consent shall be in writing and shall comply with requirements specified in s. 51.30(2), Stats., and this subsection.

(a) Informed consent shall be valid only if voluntarily given by a patient who is substantially able to understand all information specified on the consent form. A guardian may give consent on behalf of the guardian's ward. If the patient is not competent to understand and there is no guardian, a temporary guardian shall be sought in accordance with s. 880.15, Stats.

(b) Informed consent is effective only for the period of time specified by the patient in the informed consent document.

(c) A copy of each informed consent document shall be offered to the patient or guardian and a copy shall be maintained in the treatment record.

(d) Each informed consent document shall include a statement that the patient has a right to inspect and receive a copy of the material to be disclosed as required under ss. HFS 92.05 and 92.06.

(e) Any patient or patient representative authorized under s. 51.30(5), Stats., may refuse authorization or withdraw authorization for disclosure of any information at any time. If this occurs, an agency not included under s. 51.30(4)(b), Stats., that requests release of information requiring informed consent shall be told only that s. 51.30, Stats., prohibit release of the information requested.

**(4) RELEASE OF TREATMENT RECORDS AFTER DEATH.**

(a) Consent for the release of treatment records of a deceased patient may be given by an executor, administrator or other court-appointed personal representative of the estate.

(b) If there is no appointment of a personal representative, the consent may be given by the patient's spouse or, if there is none, by any responsible member of the patient's family.

(c) Disclosures required under federal or state laws involving the collection of death statistics and other statistics may be made without consent.

**History:** Cr. Register, May, 1984, No. 341, eff. 6-1-84.

**HFS 92.04 Disclosure without informed consent.**

**(1) AUDITS AND EVALUATION.** (a) Treatment records may be disclosed for management audits, financial audits or program

monitoring and evaluation but only as authorized under s. 51.30(4)(b)1., Stats., and this subsection.

(b) A record of all audits and evaluations shall be maintained at each treatment facility.

(c) Auditors and evaluators shall provide the treatment facility with written documentation regarding their authority to audit or evaluate by reference to statutes, administrative rules or certification by the department.

**(2) BILLING OR COLLECTION.** (a) Treatment records may be released for billing or collection purposes only as authorized under s. 51.30(4)(b)2., Stats., and this subsection.

(b) Any information specified in ch. HFS 1 may be released to the collection authority under ss. 46.03(18) and 46.10, Stats.

**Note:** Under ss. 46.03(18) and 46.10, Stats., the department is the collection authority for all services provided by the department or boards. Where collection authority has not been delegated, the department's bureau of collections is the only qualified service organization for collections allowed by Wisconsin law. Where collections have been delegated, boards or facilities are agencies of the department for billing and collection purposes.

(c) Patient information may be released to county departments of public welfare or social services only in accordance with the provisions of sub. (13).

(d) Patient information may be released to third-party payers only with informed consent.

(e) Each agency with billing and collection responsibility shall develop further written procedures as needed to ensure confidentiality of billing and collection information. These procedures shall be made available to the department upon request.

**Note:** Further confidentiality provisions on billing and collections are specified in ss. HFS 1.05 and 1.06.

**(3) RESEARCH.** Treatment records may be released for purposes of research only as authorized under s. 51.30(4)(b)3., Stats.

**(4) COURT ORDER.** (a) Treatment records may be released pursuant to a lawful court order only as authorized under s. 51.30(4)

(b) 4, Stats., and this subsection.

**Note:** If a treatment facility director, program director or department official believes that the court order is unlawful, that person should bring the order to the attention of his or her agency's legal counsel.

(b) A subpoena, unless signed by a judge of a court of record, is not sufficient to authorize disclosure.

(c) A court order regarding confidential drug or alcohol treatment information shall be in compliance with 42 CFR Part 2, Subpart E.

**Note:** When a subpoena signed by an attorney or the clerk of court requires the record custodian to appear at the hearing with the records, the custodian should assert the privilege and refuse to turn the records over until ordered to do so by the circuit judge.

**(5) PROGRESS DETERMINATION AND ADEQUACY OF TREATMENT.**

(a) Treatment records may be made accessible to department and board staff to determine progress and adequacy of treatment or to determine whether a person should be transferred, discharged or released, but only as authorized under s. 51.30 (4) (b) 5., Stats., and this subsection.

(b) Treatment information as specified under s. 51.30(4)(b)10, Stats., may also be released to the following state employees and department board members concerning persons under their jurisdiction:

1. Members of the parole board;
2. Members of the special review board for sex crimes;
3. Employees of the juvenile offender review program; and
4. Members of the juvenile corrections reception center's joint planning and review committee.

**(6) WITHIN THE TREATMENT FACILITY.** (a) Treatment records maintained in the facility or as computerized records by the provider of data-processing services to the facility may be made available to treatment staff within the facility only as

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authorized under s. 51.30(4)(b)6., Stats., and this subsection. (b) Confidential information may be released to students or volunteers only if supervised by staff of the facility.

(c) Treatment records may be taken from the facility only by staff directly involved in the patient's treatment, or as required by law.

(7) **WITHIN THE DEPARTMENT.** Treatment records may be made available to department staff only as authorized under s. 51.30(4)(b)7., Stats., and this chapter. Information may be disclosed to qualified staff of the department from the treatment records of persons who have been committed by a court to the care and custody of the department or who are voluntarily admitted to an institution of the department under chs. 51, 55, 971, or 975, Stats., or who are under probation or parole supervision.

(8) **MEDICAL EMERGENCY.** Treatment records may be released to a physician or designee for a medical emergency only as authorized under s. 51.30(4)(b)8., Stats.

(9) **TRANSFER OF PERSON INVOLUNTARILY COMMITTED.** (a) Treatment records may be released to a treatment facility which is to receive an involuntarily committed person only as authorized under s. 51.30(4)(b)9., Stats., and this subsection.

(b) When an individual is to be transferred, the treatment director or designee shall review the treatment record to ensure that no information is released other than that which is allowed under this subsection.

(c) If a summary of somatic treatments or a discharge summary is prepared, a copy of the summary shall be placed in the treatment record.

(d) A discharge summary which meets discharge summary criteria established by administrative rules or accreditation standards shall be considered to meet the requirements for a discharge summary specified under s. 51.30(4)(b)9., Stats.

(e) Treatment information may be disclosed only to the extent that is necessary for an understanding of the individual's current situation.

(f) Disclosure of information upon transfer of a voluntary patient requires the patient's informed consent, a court order or other provision of law.

(10) **PERSONS UNDER THE RESPONSIBILITY OR SUPERVISION OF A CORRECTIONAL FACILITY OR PROBATION AND PAROLE AGENCY.** (a) Information from treatment records may be released to probation and parole agencies and correctional facilities only as authorized under s. 51.30(4)(b)10., Stats., 42 CFR 2.31 and 2.35 and this subsection.

(b) In addition to the probation and parole agent, only the following persons may have access to information from treatment records:

1. The probation and parole agent's supervisor;
2. The patient's social worker, the social worker's supervisor and their superiors; and
3. Consultants or employees of the division of corrections who have clinical assignments regarding the patients.

(c) When a patient is transferred back from a treatment facility to a correctional facility the confidential information disclosed to the correctional facility shall be restricted to information authorized under s. 51.30(4)(b)9., Stats.

(d) When a patient is under supervision of a probation and parole agent the confidential information disclosed to the agent shall be restricted to information authorized under s. 51.30(4)(b)10., Stats.

(e) Every person receiving evaluation or treatment under ch. 51, Stats., as a condition of probation or parole shall be notified of the provisions of this subsection by the person's probation and parole agent prior to receiving treatment.

(11) **COUNSEL, GUARDIAN AD LITEM, COUNSEL FOR THE INTERESTS OF THE PUBLIC, COURT-APPOINTED EXAMINER.** (a) Treatment records or portions of treatment records may be made accessible to the patient's counsel or guardian ad litem only as authorized under s. 51.30 (4) (b) 11., Stats., and this section, to the counsel for the interest of the public only as authorized under s. 51.30(4)(b)14., Stats., and this section and to the court appointed examiner only as authorized under s. 51.20(9)(a), Stats., and this section.

**Note:** 2001 Wis. Act 16 repealed s. 51.30 (4) (b) 14., Stats.

(b) A patient's attorney or guardian ad litem, or both, shall have access to alcohol and drug abuse patient treatment records only as authorized under 42 CFR 2.15 and 2.35.

(c) At times other than during normal working hours, patients' attorneys or guardians ad litem, or both, shall have access to those records directly available to staff on duty.

(d) Counsel for the interests of the public may have access to alcohol or drug abuse treatment records only with informed consent of the patient or as authorized under 42 CFR 2.61 to 2.67.

(e) A copy of the records shall be provided upon request. At times other than normal working hours, copies shall be provided only if copy equipment is reasonably available.

(12) **NOTICE TO CORRECTIONAL OFFICER OF CHANGE IN STATUS.**

(a) A treatment facility shall notify the correctional officer of any change in the patient's status as required under s. 51.30 (4) (b) 12., Stats.

(b) Release of information from records of alcohol and drug abuse patients shall be in compliance with 42 CFR Part 2, Subpart C.

(13) **BETWEEN A SOCIAL SERVICES DEPARTMENT AND A 51 BOARD.** (a) Limited confidential information may be released between a social service department and a 51-board, but only as authorized under s. 51.30(4)(b)15., Stats.

(b) Limited confidential information regarding alcohol and drug abuse patients may be released between a social services department and a 51-board only with the patient's informed consent as authorized under 42 CFR 2.31 and with a qualified service agreement under 42 CFR 2.11 (n) and (p).

(14) **BETWEEN SUB-UNITS OF A HUMAN SERVICES DEPARTMENT AND BETWEEN THE HUMAN SERVICES DEPARTMENT AND CONTRACTED SERVICE PROVIDERS.** Confidential information may be exchanged between sub-units of a human services department, which is the administrative staff of a board organized under s. 46.23, Stats., and between the human services department and service providers under contract to the human services department, as authorized under s. 46.23(3)(e), Stats.

(15) **RELEASE TO LAW ENFORCEMENT OFFICERS.** Release of limited confidential information to law enforcement officers without a patient's informed consent is permitted only to enable a law enforcement officer to take charge of and return a patient on unauthorized absence from the treatment facility, pursuant to s. 51.39, Stats., to enable a law enforcement officer to determine if an individual is on unauthorized absence from the treatment facility, pursuant to s. 51.30(4)(b)13, Stats., or by order of a court.

(a) The treatment director may disclose only the following information to the law enforcement officer acting pursuant to s. 51.39, Stats.:

1. Date, time and manner of escape;
2. Description and picture of the patient;
3. Addresses and phone numbers of relatives or other persons who might be contacted by the patient; and
4. Any other information determined by the treatment director to be of assistance in locating the patient, including advice regarding any potential danger involved in taking custody of the patient.

(b) Any access by law enforcement officers to confidential records other than as provided for in par. (a) and s. 51.30(4)(b)13., Stats., requires a court order.

1. A court order authorizing access to alcoholism or drug dependence treatment records shall comply with the requirements of 42 CFR 2.61 to 2.67.

2. A subpoena, unless signed by a judge of a court of record, does not authorize disclosure of treatment records.

(c) Access to treatment records is not authorized for any local, state or federal investigatory agency conducting pre-employment or other clearances or investigating crimes unless the agency presents a statement signed by the patient giving informed consent or a court order.

(d) Access by law enforcement authorities, when allowed pursuant to informed consent or court order, shall always pertain to a specific situation or case. In any situation involving

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court orders which appear to give authorization for broad or blanket access to records, the treatment director, the program director or the secretary of the department or designee shall seek appropriate legal counsel before disclosing any records.

**(16) UNAUTHORIZED ABSENCE.** Information from treatment records of patients admitted under s. 971.14 or 971.17, Stats., or under ch. 975, Stats., or transferred under s. 51.35(3) or 51.37, Stats., and who are on unauthorized absence from a treatment facility, may be released only as authorized under s. 51.30(4)(b)12m., Stats.

**History:** Cr. Register, May, 1984, No. 341, eff. 6-1-84.

**HFS 92.05 Patient access to treatment records.**

**(1) ACCESS DURING TREATMENT.** (a) Every patient shall have access to his or her treatment records during treatment to the extent authorized under s. 51.30(4)(d)1., Stats., and this subsection.

(b) The treatment facility director or designee may only deny access to treatment records other than records of medication and somatic treatment.

1. Denial may be made only if the director has reason to believe that the benefits of allowing access to the patient are outweighed by the disadvantages of allowing access.

2. The reasons for any restriction shall be entered into the treatment record.

(c) Each patient, patient's guardian and parent of a minor patient shall be informed of all rights of access upon admission or as soon as clinically feasible, as required under s. 51.61(1)(a), Stats., and upon discharge as required under s. 51.30(4)(d)4., Stats. If a minor is receiving alcohol or other drug abuse treatment services, the parents shall be informed that they have a right of access to the treatment records only with the minor's consent or in accordance with 42 CFR 2.15.

(d) The secretary of the department or designee, upon request of a director, may grant variances from the notice requirements under par. (c) for units or groups or patients who are unable to understand the meaning of words, printed material or signs due to their mental condition but these variances shall not apply to any specific patient within the unit or group who is able to understand. Parents or guardians shall be notified of any variance.

**(2) ACCESS AFTER DISCHARGE FOR INSPECTION OF TREATMENT RECORDS.** (a) After discharge from treatment, a patient shall be allowed access to inspect all of his or her treatment records with one working day notice to the treatment facility, board or department, as authorized under s. 51.30(4)(d)3., Stats., and this subsection.

(b) A patient making a request to inspect his or her records shall not be required to specify particular information. Requests for "all information" or "all treatment records" shall be acceptable.

(c) When administrative rules or accreditation standards permit the treatment facility to take up to 15 days or some other specified period after discharge to complete the discharge summary, the discharge summary need not be provided until it is completed in accordance with those rules or standards.

**(3) COPIES OF TREATMENT RECORDS.** (a) After being discharged a patient may request and shall be provided with a copy of his or her treatment records as authorized by s. 51.30(4)(d), Stats., and as specified in this subsection.

(b) Requests for information under this subsection shall be processed within 5 working days after receipt of the request.

(c) A uniform and reasonable fee may be charged for a copy of the records. The fee may be reduced or waived, as appropriate, for those clients who establish inability to pay.

(d) The copy service may be restricted to normal working hours.

**(4) MODIFICATION OF TREATMENT RECORDS.** (a) A patient's treatment records may be modified prior to inspection by the patient but only as authorized under s. 51.30(4)(d)3., Stats., and this subsection.

(b) Modification of a patient's treatment records prior to inspection by the patient shall be as minimal as possible.

1. Each patient shall have access to all information in the treatment record, including correspondence written to the treatment facility regarding the patient, except that these records may be modified to protect confidentiality of other patients.

2. The names of the informants providing the information may be withheld but the information itself shall be available to the patient.

(c) Under no circumstances may an entire document or acknowledgement of the existence of the document be withheld from the patient in order to protect confidentiality of other patients or informants.

(d) Any person who provides or seeks to provide information subject to a condition of confidentiality shall be told that the provided information will be made available to the patient although the identity of the informant will not be revealed.

(e) The identity of an informant providing information and to whom confidentiality has not been pledged shall be accessible to the patient as provided under this chapter.

**(5) CORRECTION OF FACTUAL INFORMATION.** (a) Correction of factual information in treatment records may be requested by persons authorized under s. 51.30 (4) (f), Stats., or by an attorney representing any of those persons. Any requests, corrections or denial of corrections shall be in accordance with s. 51.30(4)(f), Stats., and this section.

(b) A written request shall specify the information to be corrected and the reason for correction and shall be entered as part of the treatment record until the requested correction is made or until the requester asks that the request be removed from the record.

(c) During the period that the request is being reviewed, any release of the challenged information shall include a copy of the information change request.

(d) If the request is granted, the treatment record shall be immediately corrected in accordance with the request. Challenged information that is determined to be completely false, irrelevant or untimely shall be marked through and specified as incorrect.

(e) If the request is granted, notice of the correction shall be sent to the person who made the request and, upon his or her request, to any specified past recipient of the incorrect information.

(f) If investigation casts doubt upon the accuracy, timeliness or relevance of the challenged information, but a clear determination cannot be made, the responsible officer shall set forth in writing his or her doubts and both the challenge and the expression of doubt shall become part of the record and shall be included whenever the questionable information is released.

(g) If the request is denied, the denial shall be made in writing and shall include notice to the person that he or she has a right to insert a statement in the record disputing the accuracy or completeness of the challenged information included in the record.

(h) Statements in a treatment record which render a diagnosis are deemed to be judgments based on professional expertise and are not open to challenge.

**History:** Cr. Register, May, 1984, No. 341, eff. 6-1-84.

**HFS 92.06 Minors and incompetents.** (1) Obtaining informed consent for release of information from the treatment records of minors, including developmentally disabled minors, and of incompetents and granting access by the parent or guardian and by the minor to treatment records shall be in accordance with s. 51.30 (5), Stats., and this section.

(2) Information may be released from the alcohol or drug abuse treatment records of a minor only with the consent of both the minor and the minor's parent, guardian or person in the place of a parent, except that outpatient or detoxification services information, with the qualifications about these services indicated in s. 51.47 (2), Stats., shall be disclosed only with the consent of the minor provided that the minor is 12 years of age or older.

**Note:** Section 42 CFR 2.14 (b) provides that when a minor under state law can obtain treatment for alcohol abuse or drug abuse without the parent or guardian's approval, as under s. 51.47, Stats., only the minor's consent is required for disclosure of information from records of that treatment.

(3) A developmentally disabled minor aged 14 or older shall be notified of the right to file a written objection to access to treatment records by his or her parent, guardian or person in place of parent and that notice shall be documented in the treatment record.

(4) All sections of this chapter that are applicable to adults shall apply to any access to treatment records and disclosure of information from treatment records when the patient ceases to be a minor.

**History:** Cr. Register, May, 1984, No. 341, eff. 6-1-84.

**HFS 92.07 Privileged communications.** Communications between a physician or psychologist and patient or between an attorney and a client shall be privileged.

**Note:** Federal regulations regarding alcohol and drug dependence treatment records do not recognize the statutory exceptions to the physician and psychologist privilege in s. 905.04, Stats., or the attorney privilege in s. 905.03, Stats., but require either informed consent or a court order under 42 CFR 2.61 to 2.67 for disclosure of confidential information.

**History:** Cr. Register, May, 1984, No. 341, eff. 6-1-84.

**HFS 92.08 Criminal commitments.** Treatment records of persons committed under chs. 971 and 975, Stats., are covered by s. 51.30, Stats., and this chapter. Treatment records of persons sentenced to correctional facilities under criminal statutes and not receiving services from a board or a state mental health institute are not covered.

**History:** Cr. Register, May, 1984, No. 341, eff. 6-1-84.

**HFS 92.09 Grievance procedure.** Any failure to comply with provisions of s. 51.30, Stats., or this chapter may be processed as a grievance under s. 51.61(5), Stats., as provided in s. 51.30(8), Stats.

**History:** Cr. Register, May, 1984, No. 341, eff. 6-1-84.

**HFS 92.10 Discipline of employees.** Employees of the department, board, or public treatment facilities who violate requirements under s. 51.30, Stats., or this chapter may be disciplined in accordance with s. 51.30(11), Stats.

**History:** Cr. Register, May, 1984, No. 341, eff. 6-1-84.

**HFS 92.11 Employee orientation.** Directors and program directors shall ensure that persons whose regular duties include requesting, distributing, or granting access to treatment records are aware of their responsibility to maintain the confidentiality of information protected by this chapter and of the criminal and civil liabilities for violations of s. 51.30, Stats.

**History:** Cr. Register, May, 1984, No. 341, eff. 6-1-84.

**HFS 92.12 Retention periods. (1)** Treatment records shall be retained for at least 7 years after treatment has been completed, unless under this section they are to be retained for a longer period of time.

(2) In the case of a minor, records shall be retained until the person becomes 19 years of age or until 7 years after treatment has been completed, whichever is longer.

(3) Any record undergoing federal or state audit shall be maintained until completion of the audit.

(4) Records relating to legal actions shall be maintained until completion of the legal action.

(5) Records relating to billing or collections shall be maintained for periods of time specified in s. HFS 1.06.

**History:** Cr. Register, May, 1984, No. 341, eff. 6-1-84.

**HFS 92.13 Certification of compliance.** Each board shall include a clause in every purchase of service contract which states that the service provider agrees to abide by the requirements of this chapter.

**History:** Cr. Register, May, 1984, No. 341, eff. 6-1-84.

## APPENDIX E

### HFS 94 PATIENT RIGHTS AND RESOLUTION OF PATIENT GRIEVANCES

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 HFS 94.02 Definitions.  
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 HFS 94.18 Filming and taping.  
 HFS 94.19 Mail.  
 HFS 94.20 Telephone calls.  
 HFS 94.21 Visitors.  
 HFS 94.22 Voting.  
 HFS 94.23 Discharge of voluntary patients.  
 HFS 94.24 Humane psychological and physical environment.  
 HFS 94.25 Patient funds.

**Note:** Corrections in chapter HFS 94 made under s. 13.93 (2m) (b) 1., 6. and 7., Stats., Register, June, 1996, No. 486.

#### **Subchapter I — General Provisions**

##### **HFS 94.01 Authority, purpose and applicability.**

(1) **AUTHORITY AND PURPOSE.** This chapter is promulgated under the authority of s. 51.61 (5) (b) and (9), Stats., to implement s. 51.61, Stats., concerning the rights of patients receiving treatment for mental illness, a developmental disability, alcohol abuse or dependency or other drug abuse or dependency.

(2) **TO WHOM THE RULES APPLY.** (a) Except as provided in par. (b), this chapter applies to the department, to county departments established under s. 46.23, 51.42 or 51.437, Stats., and to all treatment facilities and other service providers, whether or not under contract to a county department, including the state-operated mental health institutes and centers for the developmentally disabled, habilitation or rehabilitation programs, programs certified under ch. HFS 61 and facilities licensed under ch. HFS 124 which also provide treatment for alcoholic, drug dependent, mentally ill or developmentally disabled persons. This chapter also applies to correctional institutions in which inmates receive treatment for mental disorders, but only in relation to patient rights specified in s. 51.61(1)(a), (d), (f), (g), (h), (j) and (k), Stats. This chapter does not apply to a hospital emergency room.

**Note:** The mental health treatment of inmates of correctional institutions is governed by ch. DOC 314. The application of ch. HFS 94 to correctional institutions is consistent with ss. DOC 314.02(9) and 314.04(1)(c).

(b) Subchapter III does not apply to the grievance procedures of the state mental health institutes, the state centers for persons with developmental disabilities or units housing patients committed under ch. 980, Stats., nor does it apply to individual private practitioners who deliver services through offices that are not part of a program.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; correction in (2) made under s. 13.93(2m)(b)7., Stats., Register, June, 1995, No. 474; am. (1), renum. (2) to be (2)(a) and am., cr. (2)(b), Register, June, 1996, No. 486, eff. 7-1-96.

##### **HFS 94.02 Definitions.** In this chapter:

- (1) "Body cavity search" means a strip search in which body cavities are inspected by the entry of an object or fingers into body cavities.  
 (2) "Body search" means a personal search, a strip search or a body cavity search of a patient.

HFS 94.26 Clothing and laundry.  
 HFS 94.27 Storage space.  
 HFS 94.28 Right to file grievances.  
 HFS 94.29 Grievance resolution procedures.  
 HFS 94.30 Compliance assurance.  
 HFS 94.31 Application of other rules and regulations.  
**Subchapter III — Standards for Grievance Resolution Procedures**  
 HFS 94.40 System requirements.  
 HFS 94.41 Program level review.  
 HFS 94.42 Administrative review by county or state.  
 HFS 94.43 State level review of county administrative decision.  
 HFS 94.44 Final state review.  
 HFS 94.45 Program coalitions.  
 HFS 94.46 Multiple grievances by one client.  
 HFS 94.47 Related grievances by several clients.  
 HFS 94.48 Grievances involving several programs.  
 HFS 94.49 Grievances presented on behalf of clients.  
 HFS 94.50 Interim relief.  
 HFS 94.51 Complaints related to the existence or operation of grievance resolution systems.  
 HFS 94.52 Investigation by the department.  
 HFS 94.53 Support for development of grievance resolution systems.  
 HFS 94.54 Units of time.

(3) "Client," as used in subch. III, means a patient.

(4) "Client rights specialist" means a person designated by a program or a coalition of programs to facilitate informal resolution of concerns where requested and to conduct program level reviews of grievances and make proposed factual findings, determinations of merit and recommendations for resolution which are provided to the program manager and the client.

(5) "Coalition of programs," as used in subch. III, means a group of programs which have joined together for the explicit purpose of operating a combined grievance resolution system.

(6) "Community placement" means a living situation which is arranged with the assistance of a case manager or service coordinator or a person or agency performing tasks similar to those performed by a case manager or service coordinator and which is either a residential setting that is directed and controlled by the individual or his or her guardian or a place licensed or certified as a residential care facility or care home for either adults or children by representatives of the state or county government pursuant to a comprehensive individualized plan of care or service.

(7) "Concern" means a complaint, disagreement or dispute which a client or a person on behalf of a client may have with a program or program staff which the client chooses to resolve through the informal resolution process pursuant to s. HFS 94.40(4).

(8) "County department" means the county department of human services established under s. 46.23, Stats., the county department of community programs established under s. 51.42, Stats., or the county department of developmental disabilities services established under s. 51.437, Stats.

(9) "Court order" means a lawful order of a court of competent jurisdiction.

(10) "Department" means the Wisconsin department of health and family services.

(11) "Director" means the administrator of a treatment facility or the person directing the activities of any other service provider.

(12) "Drastic treatment procedure" means an extraordinary or last resort treatment method which places the patient at serious risk for permanent psychological or physical injury, including psychosurgery, convulsive therapy other than electroconvulsive therapy and behavior modification using painful stimuli.

(13) "Emergency" means that it is likely that the patient may physically harm himself or herself or others.

(14) "Emergency situation" means a situation in which, based on the information available at the time, there is reasonable cause

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to believe that a client or a group of clients is at significant risk of physical or emotional harm due to the circumstances identified in a grievance or concern.

**(15)** "Financial benefit" means improvement in the functioning of a facility due to patient labor.

**(16)** "Forensic unit" means an inpatient ward or unit where a majority of the patients are admitted or committed under ch. 971 or 975, Stats., or under s. 51.37 (5), Stats.

**(17)** "Grievance" means a statement by a grievant that an action or an inaction by a program or its staff has abridged rights guaranteed to the client under s. 51.61, Stats., and this chapter combined with a request that the matter be dealt with through the program's formal grievance resolution process pursuant to s. HFS 94.40(5).

**(18)** "Grievance examiner" means a staff person of the department designated by the secretary to conduct first administrative level reviews of grievances appealed from programs operating independently from a county department and second administrative level reviews of grievances filed regarding programs operated by or under contract with a county department.

**(19)** "Grievance resolution system" means the procedures established by a program or coalition of programs for formally responding to a grievance.

**(20)** "Grievant" means a client who has lodged a grievance or a person who has lodged a grievance on behalf of a client pursuant to s. HFS 94.49.

**(21)** "Hospital" has the meaning prescribed in s. 50.33(2), Stats.

**(22)** "Informed consent" or "consent" means written consent voluntarily signed by a patient who is competent and who understands the terms of the consent, or by the patient's legal guardian or the parent of a minor, as permitted under s. 51.61(6) and (8), Stats., without any form of coercion, or temporary oral consent obtained by telephone in accordance with s. HFS 94.03 (2m).

**(23)** "Inpatient" means a person who is receiving treatment, care, services or supports while residing in an inpatient treatment facility, a residential treatment facility or in any facility or home which is subject to regulation as a place of residence and service provision for patients by the department, a county department or a county department of social services established under s. 46.215 or 46.22, Stats.

**(24)** "Inpatient treatment facility" has the meaning prescribed for "inpatient facility" in s. 51.01 (10), Stats., and includes the mental health institutes as defined in s. 51.01(12), Stats., the Milwaukee county mental health center established under s. 51.08, Stats., and county hospitals established under s. 51.09, Stats.

**(25)** "Institutional review board" means a board established under 45 CFR 46.

**(26)** "Isolation" means any process by which a person is physically or socially set apart by staff from others but does not include separation for the purpose of controlling contagious disease.

**(27)** "Least restrictive treatment" means treatment and services which will best meet the patient's treatment and security needs and which least limit the patient's freedom of choice and mobility.

**(28)** "Mechanical support" means an apparatus that is used to properly align a patient's body or to help a patient maintain his or her balance.

**(29)** "Medical restraint" means an apparatus or procedure that restricts the free movement of a patient during a medical or surgical procedure or prior to or subsequent to such a procedure to prevent further harm to the patient or to aid in the patient's recovery, or to protect a patient during the time a medical condition exists.

**(30)** "Outpatient" means a person receiving treatment, care, services or supports from any service provider if the person receiving the services does not reside in a facility or home owned, operated or managed by the service provider.

**(31)** "Outpatient treatment facility" means a service provider providing services for patients who do not reside in a facility or home owned, operated or managed by the service provider.

**(32)** "Patient" has the meaning prescribed in s. 51.61(1)(intro.), Stats.

**(33)** "Personal search" means a search of the patient's person, including the patient's pockets, frisking his or her body, an examination of the patient's shoes and hat and a visual inspection of the patient's mouth.

**(34)** "Physical restraint" means any physical hold or apparatus, excluding a medical restraint or mechanical support, that interferes with the free movement of a person's limbs and body.

**(35)** "Program," as used in subch. III, means any public or private organization or agency, other than Mendota and Winnebago mental health institutes, the state centers for persons with developmental disabilities and the Wisconsin resource center, which provides services or residential care for a client for mental illness, a developmental disability, alcoholism or drug dependency.

**(36)** "Program director" means the person appointed to administer the county department's programs.

**(37)** "Program manager," as used in subch. III, refers to the individual in charge of the operation of a program who has the specific authority to approve and implement decisions made through the grievance resolution process.

**(38)** "Research" means a systematic investigation designed to develop or contribute to generalizable knowledge, except that it does not include an investigation involving only treatment records or routine follow-up questionnaires.

**(39)** "Residential treatment facility" means a treatment facility or home that provides a 24-hour residential living program and services for inpatients, which is subject to regulation as a place of residence and services for patients by the department or any county department or a county department of social services under s. 46.215 or 46.22, Stats., including a center for the developmentally disabled as defined in s. 51.01(3), Stats.

**(40)** "Seclusion" means that form of isolation in which a person is physically set apart by staff from others through the use of locked doors.

**(41)** "Secretary" means the head of the department.

**(42)** "Service provider" means an agency, facility or individual providing treatment, care, services or supports to clients.

**(43)** "Strip search" means a search in which the patient is required to remove all of his or her clothing. Permissible inspection includes examination of the patient's clothing and body and visual inspection of his or her body cavities.

**(44)** "Treatment" has the meaning prescribed in s. 51.01(17), Stats.

**(45)** "Treatment facility" means any publicly or privately operated facility, unit in a facility or agency providing treatment, habilitation or rehabilitation for alcoholic, drug dependent, mentally ill or developmentally disabled persons, including an inpatient treatment facility, a residential treatment facility or an outpatient treatment facility.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; r. and recr. Register, June, 1996, No. 486, eff. 7-1-96; correction in (8) made under s. 13.93(2m)(b)7., Stats., Register January 2002 No. 553.

**HFS 94.03 Informed consent.** (1) Any informed consent document required under this chapter shall declare that the patient or the person acting on the patient's behalf has been provided with specific, complete and accurate information and time to study the information or to seek additional information concerning the proposed treatment or services made necessary by and directly related to the person's mental illness, developmental disability, alcoholism or drug dependency, including:

- (a) The benefits of the proposed treatment and services;
  - (b) The way the treatment is to be administered and the services are to be provided;
  - (c) The expected treatment side effects or risks of side effects which are a reasonable possibility, including side effects or risks of side effects from medications;
  - (d) Alternative treatment modes and services;
  - (e) The probable consequences of not receiving the proposed treatment and services;
  - (f) The time period for which the informed consent is effective, which shall be no longer than 15 months from the time the consent is given; and
  - (g) The right to withdraw informed consent at any time, in writing.
- (2) An informed consent document is not valid unless the subject patient who has signed it is competent, that is, is substantially able to understand all significant information which has been explained in easily understandable language, or the consent

form has been signed by the legal guardian of an incompetent patient or the parent of a minor, except that the patient's informed consent is always required for the patient's participation in experimental research, subjection to drastic treatment procedures or receipt of electroconvulsive therapy.

**(2m)** In emergency situations or where time and distance requirements preclude obtaining written consent before beginning treatment and a determination is made that harm will come to the patient if treatment is not initiated before written consent is obtained, informed consent for treatment may be temporarily obtained by telephone from the parent of a minor patient or the guardian of a patient. Oral consent shall be documented in the patient's record, along with details of the information verbally explained to the parent or guardian about the proposed treatment. Verbal consent shall be valid for a period of 10 days, during which time informed consent shall be obtained in writing.

**(3)** The patient, or the person acting on the patient's behalf, shall be given a copy of the completed informed consent form, upon request.

**(4)** When informed consent is refused or withdrawn, no retaliation may be threatened or carried out.

**Note:** Additional requirements relating to refusal to participate in prescribed treatment are addressed under s. HFS. 94.09.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. (1) (intro.), (a), (b), (d), (e), (f), cr. (2m), Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.04 Notification of rights. (1)** Before or upon admission or, in the case of an outpatient, before treatment is begun, the patient shall be notified orally and given a written copy of his or her rights in accordance with s. 51.61 (1) (a), Stats., and this chapter. Oral notification may be accomplished by showing the patient a video about patient rights under s. 51.61, Stats., and this chapter. The guardian of a patient who is incompetent and the parent of a minor patient shall also be notified, if they are available. Notification is not required before admission or treatment when there is an emergency.

**Note:** The statute does not make distinctions among types of treatment facilities when it comes to protecting patients' rights. Some rights may be more applicable to patients in inpatient facilities than to patients in less restrictive facilities such as sheltered workshops or outpatient clinics. When informing patients of their rights, facility directors may emphasize those rights that are most applicable to the particular facility, program or services but s. 51.61, Stats., requires notification that other rights exist and may, under some circumstances, apply in a given situation.

**(2)** Before, upon or at a reasonable time after admission, a patient shall be informed in writing, as required by s. 51.61(1)(w), Stats., of any liability that the patient or any of the patient's relatives may have for the cost of the patient's care and treatment and of the right to receive information about charges for care and treatment services.

**(3)** Patients who receive services for an extended period of time shall be orally re-notified of their rights at least annually and be given another copy of their rights in writing if they request a copy or if there has been a statutory change in any of their rights since the time of their admission.

**(4)** If a patient is unable to understand the notification of rights, written and oral notification shall be made to the parent or guardian, if available, at the time of the patient's admission or, in the case of an outpatient, before treatment is begun, and to the patient when the patient is able to understand.

**(5)** All notification of rights, both oral and written, shall be in language understood by the patient, including sign language, foreign language or simplified language when that is necessary. A simplified, printed version of patients rights shall be conspicuously posted in each patient area.

**Note:** A simplified version of patient rights in poster form is available from the Division of Disability and Elder Services, P.O. Box 7851, Madison, WI 53707.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. (1), renum. (2), (3) to be (4), (5), cr. (2), (3), Register, June, 1996, No. 486, eff. 7-1-96.

## Subchapter II — Patient Rights

**HFS 94.05 Limitation or denial of rights. (1)** No patient right may be denied except as provided under s. 51.61(2), Stats., and as otherwise specified in this chapter.

**(2)(a)** Good cause for denial or limitation of a right exists only when the director or designee of the treatment facility has reason to believe the exercise of the right would create a security problem, adversely affect the patient's treatment or seriously interfere with the rights or safety of others.

**(b)** Denial of a right may only be made when there are documented reasons to believe there is not a less restrictive way of protecting the threatened security, treatment or management interests.

**(c)** No right may be denied when a limitation can accomplish the stated purpose and no limitation may be more stringent than necessary to accomplish the purpose.

**(3)** At the time of the denial or limitation, written notice shall be provided to the patient and the guardian, if any, and a copy of that notice shall be placed in the patient's treatment record. The written notice shall:

**(a)** Inform the patient and the guardian, if any, of the right to an informal hearing or a meeting with the person who made the decision to limit or deny the right.

**(b)** State the specific conditions required for restoring or granting the right at issue;

**(c)** State the expected duration of denial or limitation; and

**(d)** State the specific reason for the denial or limitation.

**(4)** Within 2 calendar days following the denial, written notice shall be sent as follows:

**(a)** If the patient is a county department patient, to the county department's client rights specialist and, in addition, if the patient is in a department-operated facility, to the department's division of care and treatment facilities; and

**(b)** If the patient is not a county department patient, to the treatment facility's client rights specialist and, in addition, if the patient is in a department-operated facility, to the department's division of care and treatment facilities.

**Note:** Copies of the rights-denial form may be requested from the Department's website at [www.dhfs.wisconsin.gov](http://www.dhfs.wisconsin.gov) or by writing to the Division of Disability and Elder Services, P.O. Box 7851, Madison, WI 53707-7851.

**(5)** The treatment facility director or that person's designee shall hold an informal hearing or arrange for the person who made the decision to limit or deny the right to hold a meeting within 3 days after receiving a hearing request or a request for a meeting with the person who made the decision from a patient whose rights have been denied or limited. The treatment facility director or designee, in the case of a hearing, or the person who made the decision to limit or deny the right, in the case of a meeting, shall consider all relevant information submitted by or on behalf of the patient when rendering a decision.

**(6)** The service provider shall inform a patient whose rights are limited or denied in accordance with this subsection that the patient may file a grievance concerning the limitation or denial.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. (3)(a), (4) (a), (5), r. and recr. (6), Register, June, 1996, No. 486, eff. 7-1-96.

## HFS 94.06 Assistance in the exercise of rights.

**(1)** Each service provider shall assist patients in the exercise of all rights specified under ch. 51, Stats., and this chapter.

**(2)** No patient may be required to waive any of his or her rights under ch. 51, Stats., or this chapter as a condition of admission or receipt of treatment and services.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; renum and am., cr. (2), Register, June, 1996, No. 486, eff. 7-1-96.

## HFS 94.07 Least restrictive treatment and conditions.

**(1)** Except in the case of a patient who is admitted or transferred under s. 51.35(3) or 51.37, Stats., or under ch. 971 or 975, Stats., each patient shall be provided the least restrictive treatment and conditions which allow the maximum amount of personal and physical freedom in accordance with s. 51.61(1)(e), Stats., and this section.

**(2)** No patient may be transferred to a setting which increases personal or physical restrictions unless the transfer is justified by documented treatment or security reasons or by a court order.



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**Note:** Refer to ss. 51.35(1) and 55.06(9), Stats., for transfer requirements in cases that are different from those covered under s. 51.61(1)(e), Stats.

(3) Inpatient and residential treatment facilities shall identify all patients ready for placement in less restrictive settings and shall, for each of these patients, notify the county department or the county social services department of the identified county of responsibility, as determined in accordance with s. 51.40, Stats., and shall also notify the patient's guardian and guardian ad litem, if any, and the court with jurisdiction over the patient's ch. 51 or 55, Stats., placement, if any, that the patient is ready for placement in a less restrictive setting. The county department or the county social services department shall then act in accordance with s. 51.61(1)(e), Stats., to place the patient in a less restrictive setting.

(4) Inpatient and residential treatment facilities shall identify security measures in their policies and procedures and shall specify criteria for the use of each security-related procedure.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. (1), (3), renum. (5) to be HFS 94.24 (3) (i), Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.08 Prompt and adequate treatment.** All patients shall be provided prompt and adequate treatment, habilitation or rehabilitation, supports, community services and educational services as required under s. 51.61(1)(f), Stats., and copies of applicable licensing and certification rules and program manuals and guidelines.

**Note:** Educational requirements for school-age patients in inpatient facilities can be found under chs. 115 and 118, Stats.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.09 Medications and other treatment.**

(1) Each patient shall be informed of his or her treatment and care and shall be permitted and encouraged to participate in the planning of his or her treatment and care.

(2) A patient may refuse medications and any other treatment except as provided under s. 51.61 (1) (g) and (h), Stats., and this section.

(3) Any patient who does not agree with all or any part of his or her treatment plan shall be permitted a second consultation for review of the treatment plan as follows:

(a) An involuntary patient may request a second consultation from another staff member who is not directly providing treatment to the patient, and the treatment facility shall make the designated staff member available at no charge to the patient; and

(b) Any patient may, at his or her own expense, arrange for a second consultation from a person who is not employed by the treatment facility to review the patient's treatment record.

(c) Service providers may pay for some or all of the costs of any second consultation allowed under par. (b). Service providers may also enter into agreements with other service providers to furnish consultations for each other's clients.

(4) Except in an emergency when it is necessary to prevent serious physical harm to self or others, no medication may be given to any patient or treatment performed on any patient without the prior informed consent of the patient, unless the patient has been found not competent to refuse medication and treatment under s. 51.61 (1) (g), Stats., and the court orders medication or treatment. In the case of a patient found incompetent under ch. 880, Stats., the informed consent of the guardian is required. In the case of a minor, the informed consent of the parent or guardian is required. Except as provided under an order issued under s. 51.14 (3) (h) or (4) (g), Stats., if a minor is 14 years of age or older, the informed consent of the minor and the minor's parent or guardian is required. Informed consent for treatment from a patient's parent or guardian may be temporarily obtained by telephone in accordance with s. HFS 94.03 (2m).

(5) A voluntary patient may refuse any treatment, including medications, at any time and for any reason, except in an emergency, under the following conditions:

(a) If the prescribed treatment is refused and no alternative treatment services are available within the treatment facility, it is not considered coercion if the facility indicates that the patient has a choice of either participating in the prescribed treatment or being discharged from the facility; and

(b) The treatment facility shall counsel the patient and, when possible, refer the patient to another treatment resource prior to discharge.

(6) The treatment facility shall maintain a patient treatment record for each patient which shall include:

(a) A specific statement of the diagnosis and an explicit description of the behaviors and other signs or symptoms exhibited by the patient;

(b) Documentation of the emergency when emergency treatment is provided to the patient;

(c) Clear documentation of the reasons and justifications for the initial use of medications and for any changes in the prescribed medication regimen; and

(d) Documentation that is specific and objective and that adequately explains the reasons for any conclusions or decisions made regarding the patient.

(7) A physician ordering or changing a patient's medication shall ensure that other members of the patient's treatment staff are informed about the new medication prescribed for the patient and the expected benefits and potential adverse side effects which may affect the patient's overall treatment.

(8) A physician ordering or changing a patient's medication shall routinely review the patient's prescription medication, including the beneficial or adverse effects of the medication and the need to continue or discontinue the medication, and shall document that review in the patient's treatment record.

(9) Each inpatient and residential treatment facility that administers medications shall have a peer review committee or other medical oversight mechanism reporting to the facility's governing body to ensure proper utilization of medications.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; renum. (1) to (8) to be (2) to (9) and am. (4); cr. (1), (3) (c), (6) (d), Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.10 Isolation, seclusion and physical restraints.** Any service provider using isolation, seclusion or physical restraint shall have written policies that meet the requirements specified under s. 51.61(1)(i), Stats., and this chapter. Isolation, seclusion or physical restraint may be used only in an emergency, when part of a treatment program or as provided in s. 51.61(1)(i)2., Stats. For a community placement, the use of isolation, seclusion or physical restraint shall be specifically approved by the department on a case-by-case basis and by the county department if the county department has authorized the community placement. In granting approval, a determination shall be made that use is necessary for continued community placement of the individual and that supports and safeguards necessary for the individual are in place.

**Note:** The use of isolation, seclusion or physical restraint may be further limited or prohibited by licensing or certification standards for that service provider.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; r. and recr. Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.11 Electroconvulsive therapy.** (1) No patient may be administered electroconvulsive therapy except as specified under s. 51.61 (1) (k), Stats., and this section.

(2) The patient shall be informed that he or she has a right to consult with legal counsel, legal guardian, if any, and independent specialists prior to giving informed consent for electroconvulsive therapy.

(3) A treatment facility shall notify the program director prior to the planned use of electroconvulsive therapy on a county department patient.

(4) Electroconvulsive therapy may only be administered under the direct supervision of a physician.

(5) A service provider performing electroconvulsive therapy shall develop and implement written policies and procedures for obtaining and monitoring informed consent.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; cr. (5), Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.12 Drastic treatment procedures.** (1) Drastic treatment procedures may only be used in an inpatient treatment facility or a center for the developmentally disabled as defined in s. 51.01(3), Stats. No patient may be subjected to drastic treatment procedures except as specified under s. 51.61(1)(k), Stats., and this section.

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(2) The patient shall be informed that he or she has a right to consult with legal counsel, legal guardian, if any, and independent specialists prior to giving informed consent for drastic treatment procedures.

(3) The treatment facility shall notify the program director prior to the planned use of drastic treatment procedures on county department patients.

(4) Each county department shall report monthly to the department the type and number of drastic treatment procedures used on county department patients.

**Note:** Reports required under sub. (4) should be sent to the area administrator in the appropriate Department regional office. The addresses of all regional offices are available from the Office of Strategic Finance, P.O. Box 7850, Madison, WI 53707.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87.

**HFS 94.13 Research and human rights committee.**

(1) An inpatient or residential treatment facility conducting or permitting research or drastic treatment procedures involving human subjects shall establish a research and human rights committee in accordance with 45 CFR 46, s. 51.61 (4), Stats., and this section.

(2) The committee shall include 2 members who are consumers or who represent either an agency or organization which advocates rights of patients covered by this chapter.

(3) The inpatient or residential treatment facility research and human rights committee shall designate a person to act as consent monitor who shall be authorized to validate informed consent and terminate a patient's participation in a research project or a drastic treatment procedure immediately upon violation of any requirement under this chapter or upon the patient's withdrawal of consent.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87.

**HFS 94.14 Research.** (1) All proposed research involving patients shall meet the requirements of s. 51.61 (1) (j), Stats., 45 CFR 46, and this section.

(2) No patient may be subjected to any experimental diagnostic or treatment technique or to any other experimental intervention unless the patient gives informed consent, the patient's informed consent is confirmed by the consent monitor and the research and human rights committee has determined that adequate provisions are made to:

- (a) Protect the privacy of the patient;
- (b) Protect the confidentiality of treatment records in accordance with s. 51.30, Stats., and ch. HFS 92;
- (c) Ensure that no patient may be approached to participate in the research unless the patient's participation is approved by the person who is responsible for the treatment plan of the patient; and
- (d) Ensure that the conditions of this section and other requirements under this chapter are met.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; correction in (2)(b) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

**HFS 94.15 Labor performed by patients.** (1) Any labor performed by a patient which is of financial benefit to the treatment facility shall be conducted within the requirements under s. 51.61(1)(b), Stats., and this section.

(2) Patients may only be required to perform tasks that are equivalent to personal housekeeping chores performed in common or private living areas of an ordinary home. Personal housekeeping tasks may include light cleaning of shared living quarters if all patients sharing those quarters participate as equally as possible in the cleaning chores.

(3) Payment for therapeutic labor authorized under s. 51.61(1)(b), Stats., shall be made in accordance with wage guidelines established under state and federal law.

(4) Documentation shall be made in the treatment record of any compensated, uncompensated, voluntary or involuntary labor performed by any patient.

(5) The document used to obtain informed consent for application of a patient's wages toward the cost of treatment shall conspicuously state that the patient has the right to refuse consent without suffering any adverse consequences.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. (2), (3), Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.16 Religious worship.** (1) All inpatients shall be allowed to exercise their right to religious worship as specified under s. 51.61(1)(L), Stats., and this section.

(2) The director of each treatment facility serving inpatients shall seek clergy to be available to meet the religious needs of the inpatients.

(3) The director or designee shall make reasonable provision for inpatients to attend religious services either inside or outside the facility, except for documented security reasons, and shall honor any reasonable request for religious visitation by the representative of any faith or religion.

(4) Visiting clergy shall have the same access to inpatients as staff clergy except that visiting clergy may be required to work with and be accompanied by staff clergy.

(5) A patient whose disruptive behavior interferes with other patients' right to worship shall be removed from worship services.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87.

**HFS 94.17 Confidentiality of records.** All treatment records are confidential. A patient or guardian may inspect, copy and challenge the patient's records as authorized under s. 51.30, Stats., and ch. HFS 92.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; correction made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

**HFS 94.18 Filming and taping.** (1) No patient may be recorded, photographed, or filmed for any purpose except as allowed under s. 51.61 (1) (o), Stats., and this section.

(2) A photograph may be taken of a patient without the patient's informed consent only for the purpose of including the photograph in the patient's treatment record.

(3) The informed consent document shall specify that the subject patient may view the photograph or film or hear the recording prior to any release and that the patient may withdraw informed consent after viewing or hearing the material.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87.

**HFS 94.19 Mail.** (1) Each inpatient shall be allowed to send and receive sealed mail in accordance with s. 51.61(1)(cm)1., Stats., and this section.

(2) Any inpatient who has been determined indigent under the facility's operating policies shall, upon request, be provided with up to 2 stamped non-letterhead envelopes each week and with non-letterhead stationery and other letter-writing materials.

(3) Mail shall be delivered to inpatients promptly by the facility's normal distribution procedures.

(4) Upon request of an inpatient or his or her guardian, mail shall be opened by a facility staff member and read to him or her. The initial request shall be documented in the treatment record.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register December 2003 No. 576.

**HFS 94.20 Telephone calls.** (1) Inpatients shall be allowed reasonable access to a telephone to make and receive a reasonable number of telephone calls as authorized by s. 51.61(1)(p), Stats., and this section.

(2) Patients shall be permitted to make an unlimited number of private telephone calls to legal counsel and to receive an unlimited number of private telephone calls from legal counsel.

(3)(a) Except as provided in par. (b), each inpatient shall be permitted to make a reasonable number of private, personal calls. The number and duration of the calls may be limited for legitimate management reasons, but the facility shall provide every patient the opportunity to make at least one private, personal telephone call per day.

(b) This subsection does not prohibit a facility under s. 980.065, Stats., from recording patients' personal telephone calls or monitoring the resulting recordings.

(4) Inpatients who have been determined indigent under a facility's operating policies shall be permitted to make telephone calls under sub. (2), and at least one private, personal call per day free of charge.

(5) Treatment facilities shall provide the number of regular or pay telephones necessary to meet requirements of this section, subject to restrictions imposed by local telephone companies regarding installation of pay telephones.

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**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. (1), (3), (4), Register, June, 1996, eff 7-1-96; CR 00-151: am. (3) Register January 2002 No. 553, eff. 2-1-02.

**HFS 94.21 Visitors.** (1) Each inpatient shall be permitted to see visitors each day, as authorized by s. 51.61 (1) (t), Stats., and in accordance with this section.

(2) Adequate and reasonably private space shall be provided to accommodate visitors so that severe time limits need not be set on a visit.

(3) Every visitor who arrives during normal visiting hours shall be permitted to see the patient unless the patient refuses to see the visitor.

(4) The treatment facility may require prior identification of potential visitors and may search visitors but only when there are documented security reasons for screening or searching visitors.

(5) Visits may not be limited to less than one hour, except under documented special circumstances.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87.

**HFS 94.22 Voting.** (1) The director of each treatment facility serving inpatients shall ensure that inpatients have an opportunity to vote, unless they are otherwise restricted by law from voting, by:

(a) Surveying all patients 18 years of age or over to ascertain their interest in registering to vote, obtaining absentee ballots and casting ballots. The survey shall be conducted far enough before an election to allow sufficient time for voter registration and acquisition of absentee ballots;

(b) Making arrangements with state and local election officials to register voters and to enable interested inpatients to cast ballots at the facility; and

(c) With a patient's consent, assisting election officials in determining the patient's place of residence for voting purposes.

(2) A treatment facility director may not prohibit an inpatient from receiving campaign literature or placing political advertisements in his or her personal quarters and shall permit candidates to campaign during reasonably regulated times at designated locations on facility property.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87.

**HFS 94.23 Discharge of voluntary patients.**

(1) When a voluntary inpatient requests a discharge, the facility director or designee shall either release the patient or file a statement of emergency detention with the court as provided under ss. 51.10(5), 51.13(7)(b) and 51.15(10), Stats., and this section.

(2) If a voluntary inpatient requests a discharge and he or she has no other living quarters or is in need of other services to make the transition to the community, the following actions shall be taken by the facility director or designee prior to discharge:

(a) Counsel the patient and, when possible, assist the patient in locating living quarters;

(b) Inform the applicable program director, if any, of the patient's need for residential and other necessary transitional services; and

(c) If no living arrangements have been made by the time of discharge, refer the patient to an appropriate service agency for emergency living arrangements.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87.

**HFS 94.24 Humane psychological and physical environment.**

(1) **CLEAN, SAFE AND HUMANE ENVIRONMENT.** Treatment facilities shall provide patients with a clean, safe and humane environment as required under s. 51.61 (1) (m), Stats., and this section.

(2) **COMFORT, SAFETY AND RESPECT.** (a) Staff shall take reasonable steps to ensure the physical safety of all patients.

(b) Each patient shall be treated with respect and with recognition of the patient's dignity by all employees of the service provider and by all licensed, certified, registered or permitted providers of health care with whom the patient comes in contact.

(c) A treatment facility may fingerprint a patient only if the patient is unknown, has no means of identification, cannot otherwise be identified and fingerprinting is required for identification. This restriction does not apply to patients transferred to the facility under s. 51.35 (3) or 51.37, Stats., or committed under ch. 971 or 975, Stats.

(d) Only inpatients may be subjected to a body search. All body searches shall be conducted as follows:

1. A personal search of an inpatient may be conducted by any facility staff member:

a. Before a patient leaves or enters the security enclosure of maximum security units;

b. Before a patient is placed in seclusion;

c. When there is documented reason to believe the patient has, on his or her person, objects or materials which threaten the safety or security of patients or other persons; or

d. If, for security reasons, the facility routinely conducts personal searches of patients committed under ch. 971 or 975, Stats., patients residing in the maximum security facility at the Mendota mental health institute or a secure mental health unit or facility under s. 980.065, Stats., and persons transferred under s. 51.35(3) or 51.37, Stats.;

2. A strip search of an inpatient may be conducted:

a. Only in a clean and private place;

b. Except in an emergency, only by a person of the same sex;

c. Only when all less intrusive search procedures are deemed inadequate; and

d. Only under circumstances specified under subd. 1. a. to c.;

3. A body cavity search of an inpatient may be conducted:

a. Only in a clean and private place;

b. Only by a physician and, whenever possible, by a physician of the same sex;

c. Only when all less intrusive search procedures are deemed inadequate; and

d. Only under circumstances specified under subd. 1. a. to c.

(e) The room and personal belongings of an inpatient may be searched only when there is documented reason to believe that security rules have been violated, except that searches may be conducted in forensic units, the maximum security facility at the Mendota mental health institute or a secure mental health unit or facility under s. 980.065, Stats., in accordance with written facility policies.

(f) Each inpatient shall be assisted to achieve maximum capability in personal hygiene and self-grooming and shall have reasonable access to:

1. Toilet articles;

2. Toothbrush and dentifrice;

3. A shower or tub bath at least once every 2 days, unless medically contraindicated;

4. Services of a barber or beautician on a regular basis; and

5. Shaving equipment and facilities.

(g) Each patient shall be given an opportunity to refute any accusations prior to initiation of disciplinary action.

(h) No patient may be disciplined for a violation of a treatment facility rule unless the patient has had prior notice of the rule.

(i) 1. Each inpatient shall have unscheduled access to a working flush toilet and sink, except when the patient is in seclusion or for security reasons or when medically contraindicated.

2. Upon request of the patient, the legal guardian of an incompetent patient or the parent of a minor, staff of the same sex shall be available to assist the patient in toileting or bathing.

3. Every patient in isolation or seclusion shall be provided an opportunity for access to a toilet at least every 30 minutes.

(j) Inpatients shall be allowed to provide their own room decorations except that a facility may restrict this right for documented security or safety reasons. Facilities may adopt policies restricting the areas where patients may display sexually explicit or patently offensive room decorations and may prohibit gang-related room decorations.

(3) **SOCIAL, RECREATIONAL AND LEISURE TIME**

**ACTIVITIES.** (a) Inpatients shall be provided access to current newspapers and magazines, and shall have reasonable access to radio and television upon request, except for documented security or safety reasons.

(b) An inpatient shall be allowed individual expression through music, art, reading materials and media except for any limitation that may be necessary for documented security or safety reasons.

(c) Inpatients may not be prevented from acquiring, at their own expense, printed material, a television, a radio, recordings or movies, except for documented security or safety reasons.

(d) Each inpatient shall have reasonable access to his or her own musical instruments and to art and writing supplies, along with reasonable access to appropriate space and supervision for

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the use of the instruments and supplies, except for documented security or safety reasons.

**Note:** Any denial or restriction of a patient's right to use his or her personal articles is governed by s. HFS 94.05 and s. 51.61 (2), Stats.

(e) Each inpatient shall be provided suitable opportunities for social interaction with members of both sexes, except for documented treatment, security or safety reasons.

(f) Each inpatient shall have an opportunity for reasonable and regular access to facilities for physical exercise and shall have an opportunity for access to a variety of appropriate recreational facilities away from the living unit to the extent possible, except for any limitation that may be necessary for documented individual security or safety reasons.

(g) Each inpatient shall be provided an opportunity to be out of doors at regular and frequent intervals, with supervision as necessary, except when health reasons or documented individual security reasons indicate otherwise.

(h) Patients have a right to be free from having arbitrary decisions made about them. To be non-arbitrary, a decision about a client shall be rationally based upon a legitimate treatment, management or security interest.

(i) Inpatients shall be permitted to conduct personal and business affairs in any lawful manner not otherwise limited by statute so long as these do not interfere with the patient's treatment plan, the orderly operation of the facility, security or the rights of other patients.

**(4) FOOD SERVICE.** (a) Each inpatient shall be provided a nutritional diet which permits a reasonable choice of appealing food served in a pleasant manner.

(b) Snacks between meals shall be accessible to inpatients on all living units, except when contraindicated for individual patients.

(c) All inpatients shall be allowed a minimum of 30 minutes per meal and additional time as feasible.

(d) Menu preparation shall take into account customary religious, cultural or strongly-held personal convictions of inpatients.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. (2)(b), (j), (3)(b), (f), (g), cr. (3)(h), renum. (3)(i) from HSS 94.07(5), Register, June, 1996, No. 486, eff. 7-1-96; emerg. am. (2)(e), eff. 8-15-98; am. (2)(d) 1. d. and (e), Register, April, 1999, No. 520, eff. 5-1-99.

**HFS 94.25 Patient funds.** Except as otherwise provided under s. 51.61(1)(v), Stats., a patient shall be permitted to use the patient's own money as the patient wishes. A service provider holding funds for a patient shall give the patient an accounting of those funds in accordance with s. 51.61 (1) (v), Stats.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.26 Clothing and laundry.** (1) Inpatients shall be permitted to wear their own clothing as authorized under s. 51.61(1)(q), Stats., and this section.

(2) If inpatients do not have enough of their own clothing, they shall be furnished with appropriate noninstitutional clothing of proper size as follows:

(a) There shall be sufficient clothing to allow each patient at least one change of underwear a day and 3 changes of clothing a week; and

(b) There shall be clothing which is appropriate for patients to wear out of doors and on trips or visits in all weather conditions.

(3) All inpatients shall be provided with laundry service or, if the patient can use a washer and dryer, with access to washers and dryers. Facilities shall take reasonable measures to prevent the loss of inpatients' clothing during use of laundry services.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; renum. from HSS 94.25, Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.27 Storage space.** (1) Each inpatient shall be provided sufficient and convenient space for clothing, toilet articles and other personal belongings, as required under s. 51.61(1)(r), Stats., and this section.

(2) Individual storage space shall be conveniently accessible to the patient, shall accommodate hanging of clothes and shall be lockable or otherwise made secure if requested by the patient.

(3) Personal storage space may be searched only if there is documented reason to believe a violation of the facility's security regulations has occurred and the patient is given the opportunity to be present during the search, except in forensic units where routine

searches may be conducted in accordance with written facility policies.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; renum. from HSS 94.26, Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.28 Right to file grievances.** (1) A patient or a person acting on behalf of a patient may file a grievance under s. HFS 94.29 procedures with the administrator of a facility or other service provider or with a staff member of the facility or other service provider without fear of reprisal and may communicate, subject to s. 51.61(1)(p), Stats., with any public official or any other person without fear of reprisal.

(2) No person may intentionally retaliate or discriminate against any patient, person acting on behalf of a patient or employee for contacting or providing information to any official or to an employee of any state protection and advocacy agency, or for initiating, participating in or testifying in a grievance procedure or in any action for any remedy authorized by law.

(3) No person may deprive a patient of the ability to seek redress for alleged violations of his or her rights by unreasonably precluding the patient from using the grievance procedure established under s. HFS 94.29 or from communicating, subject to any valid telephone or visitor restriction under s. HFS 94.05, with a court, government official, grievance investigator or staff member of a protection and advocacy agency or with legal counsel.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.29 Grievance resolution procedures.** Failure of a treatment facility to comply with any provision of rights under s. 51.61, Stats., or this chapter may be processed as a grievance under s. 51.61(5), Stats., and subch. III of this chapter.

**History:** Renum. from HSS 94.27 (1) and am., Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.30 Compliance assurance.** (1) Each treatment facility director and program director shall ensure that all of his or her employees who have any patient contact are aware of the requirements of this chapter and of the criminal and civil liabilities for violation of ss. 51.30(10), 51.61, 146.84, 813.123, 940.22(2), 940.225, 940.285, 940.295 and 943.20(3)(d)6., Stats., and of the protection for reporting violations of rights to licensing agencies under s. 51.61(10), Stats.

(2) In the event that a contracted treatment facility does not comply with an applicable requirement of this chapter, the county department shall notify the department of the specific non-compliance within 7 calendar days of its discovery.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; renum. from HSS 94.28, Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.31 Application of other rules and regulations.** In applying the requirements of this chapter, when a different state rule or federal regulation also applies to the protection of a particular right of patients, the different state rule or federal regulation shall be controlling if it does more to promote patient rights than the counterpart requirement in this chapter.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; renum. from HSS 94.29, Register, June, 1996, No. 486, eff. 7-1-96.

### Subchapter III — Standards for Grievance Resolution Procedures

**HFS 94.40 System requirements.** (1) GRIEVANCE RESOLUTION SYSTEM REQUIRED. All programs providing services or residential care to persons who need the services or residential care because of mental illness, a developmental disability, alcoholism or drug dependency, as those terms are defined in s. 51.01, Stats., shall have a grievance resolution system which complies with the requirements of this subchapter.

(2) WRITTEN POLICIES. A program shall have written policies which provide that:

(a) Staff of the program know and understand the rights of the clients they serve;

(b) Fair, responsive and respectful procedures are available which permit clients to obtain resolution of their grievances within the time frames provided in this subchapter;

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(c) Staff and clients are instructed in both the formal procedures by which clients may seek resolution of grievances, and informal methods for resolving client concerns; and

(d) Staff who act as client rights specialists, or private individuals with whom the program contracts for this service, are trained in the procedures required by this subchapter, techniques for resolution of concerns and grievances and the applicable provisions of ch. 51, Stats., ch. HFS 92 and this chapter.

**(3) CLIENT RIGHTS SPECIALIST.** (a) Each program or coalition of programs shall designate one or more persons to act as client rights specialists.

(b) The client rights specialist may be an employee of the program or of one of the programs in a coalition or may be a person under contract to a program or to a coalition of programs.

(c) The client rights specialist assigned to conduct a program level review under s. HFS 94.41 shall not have any involvement in the conditions or activities forming the basis of the client's grievance, or have any other substantial interest in those matters arising from his or her relationship to the program or the client, other than employment.

(d) If at any time during the formal resolution process a grievant wishes to switch to the informal resolution process, and the other parties agree to the switch, the client rights specialist may suspend the formal resolution process and attempt to facilitate a resolution of the matter between the parties without prejudice to positions of the grievant or the program.

(e) If the client chooses to use the informal resolution process and the matter is resolved, the client rights specialist shall prepare a brief report indicating the nature of the resolution and file it with the program manager, with copies to the client, any person acting on behalf of the client pursuant to s. HFS 94.49, and the parent or guardian of a client if that person's consent is required for treatment.

**(4) INFORMAL RESOLUTION PROCESS.** (a) Each program shall have available a process which offers clients and persons acting on behalf of clients the option of seeking informal resolution of their concerns.

(b) Use of the informal resolution process shall not be a prerequisite for seeking formal relief.

(c) The informal resolution process may be used pending initiation of the formal resolution process or as an adjunct during the formal resolution process.

(d) The informal resolution process shall be adapted to the particular needs and strengths of the clients being served by the program in order to assist them and any persons acting on their behalf to participate in and understand the process as much as possible.

(e) Any applicable time limits of the formal resolution process shall be suspended during the use of the informal resolution process until a grievant indicates that he or she wishes the formal resolution process to begin or until any party requests that the formal resolution process resume.

**(5) FORMAL RESOLUTION PROCESS.** Each program shall have a formal resolution process for program level review of grievances under s. HFS 94.41 which includes:

(a) A process for training client rights specialists and for protecting their neutrality while conducting grievance reviews by establishing conditions which allow them to be objective in their actions, such as not allowing retribution against them for unpopular decisions;

(b) Procedures for:

1. Conducting program level inquiries;
2. Preparing reports that include factual findings, determinations of merit and recommendations for resolving grievances;
3. Completing the review process within the time limits of this subchapter;
4. Maintaining impartiality in the conduct of the inquiry; and
5. Permitting both clients and staff an equal opportunity to be heard during the process;

(c) A method for informing clients and their guardians, parents and advocates about the way grievances are presented and the process by which reviews of grievances are conducted which takes into account any special limitations clients of the program may have and adapts the system to allow clients to participate in the process to the fullest extent possible;

(d) A process for responding to decisions on grievance reviews at any level that provides for rapid and accurate compliance with final determinations as well as orders for interim relief under s. HFS 94.50;

(e) A provision that, at any time, if all parties agree, the formal resolution process and any applicable time limits may be suspended to allow the parties to attempt an informal resolution of the matter under sub. (4), facilitated by the individual conducting the review at that level of the process. If time limits are suspended, they shall begin running again upon request of any party that the formal process be resumed.

**(6) PROTECTIONS FOR CLIENTS AND ADVOCATES.** A program shall have policies and procedures in place which provide that no sanctions will be threatened or imposed against any client who files a grievance, or any person, including an employee of the department, a county department or a service provider, who assists a client in filing a grievance.

**Note:** See s.51.61(5)(d) and (7m), Stats., for the civil and criminal penalties that are available to deal with anyone who threatens action or takes action against a client who files a grievance or against a person who assists a client in filing a grievance.

**(7) CLIENT INSTRUCTION.** As part of the notification of rights required under s. HFS 94.04, each program shall establish specific methods of instruction to help clients and their parents or guardians, if consent by a parent or guardian is required for treatment, understand and use the grievance system.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96; correction in (2)(d) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

**HFS 94.41 Program level review. (1) PRESENTATION OF GRIEVANCE.** (a) A program shall establish a flexible and open process through which clients and those acting on behalf of clients can present grievances.

**Note:** See HFS 94.49 for grievances presented on behalf of clients, including clients under guardianship.

(b) A grievance may be presented to the program manager or any staff person in writing, orally or by any alternative method through which the client or other person ordinarily communicates.

(c) Whenever possible, a program shall attempt to resolve a grievance at the time it is presented by listening to the nature of the complaint and by making adjustments in operations or conditions that respond to the individual needs of the client.

(d) If a grievance cannot be immediately resolved, the person presenting the issue shall be given the option of using the program's formal or informal resolution process.

(e) If the informal resolution process under s. HFS 94.40(4) is chosen, any time limits in sub. (5) shall be suspended while the parties work out their differences.

(f) If the formal resolution process under s. HFS 94.40(5) is chosen, the program shall refer the grievance to a client rights specialist who shall conduct an inquiry and file a report as provided in subs. (2) and (3).

**(2) INQUIRY BY CLIENT RIGHTS SPECIALIST.** (a) Upon receiving a referral, the client rights specialist shall meet with the grievant and the client, if different, and any staff member who may be named in the complaint, identify the matters at issue and explain the process for seeking formal resolution of grievances.

(b) If the grievance was presented orally or through an alternative form of communication, the client rights specialist shall assist the grievant in putting the grievance into writing for use in the ongoing process. A copy of the written grievance shall be given to the grievant and the client, and included in the report.

(c) 1. If there are facts in dispute, the client rights specialist shall conduct an inquiry into the incidents or conditions which are the focus of the grievance.

2. The program manager shall provide the client rights specialist with full access to all information needed to investigate the grievance, all relevant areas of the program facility named in the grievance and all records pertaining to the matters raised in the grievance.

3. The inquiry of the client rights specialist may include questioning staff, the client or clients on whose behalf the

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grievance was presented, other clients, reviewing applicable records and charts, examining equipment and materials and any other activity necessary in order to form an accurate factual basis for the resolution of the grievance.

(d) When an inquiry requires access to confidential information protected under s. 51.30, Stats., and the client rights specialist conducting the inquiry does not otherwise have access to the information under an exception found in s. 51.30(4)(b), Stats., the client, or the guardian or parent of the client, if the guardian or parent's consent is required, may be asked to consent in writing to the release of that information to the client rights specialist and other persons involved in the grievance resolution process. The client rights specialist may proceed with the inquiry only if written consent is obtained. If consent for access is not granted, the program shall attempt to resolve the matter through the informal resolution process. The program may include in forms used for presenting written grievances a corresponding provision relating to consent for release of confidential information.

(e) The client rights specialist shall maintain the confidentiality of any information about any program client gained during the inquiry, unless specific releases for that information are granted.

(f) With the consent of the grievant, the client rights specialist may suspend the formal resolution process and attempt an informal resolution of the grievance as provided in s. HFS 94.40(4).

**(3) REPORT OF CLIENT RIGHTS SPECIALIST.** (a) In this subsection:

1. "Founded" means that there has been a violation of a specific right guaranteed to the client under ch. HFS 92 or this chapter or ch. 51, Stats.

2. "Unfounded" means that the grievance is without merit or not a matter within the jurisdiction of ch. HFS 92 or this chapter or s. 51.61, Stats.

(b) When the inquiry under sub. (2)(c) is complete, the client rights specialist shall prepare a written report with a description of the relevant facts agreed upon by the parties or gathered during the inquiry, the application of the appropriate laws and rules to those facts, a determination as to whether the grievance was founded or unfounded, and the basis for the determination.

(c) If the grievance is determined to be founded, the report shall describe the specific actions or adjustments recommended by the client rights specialist for resolving the issues presented. Where appropriate, the recommendation may include a timeline for carrying out the proposed acts and adjustments.

(d) If the grievance is determined to be unfounded, but through the process of the inquiry the client rights specialist has identified issues which appear to affect the quality of services in the program or to result in significant interpersonal conflicts, the report may include informal suggestions for improving the situation.

(e) Copies of the report shall be given to the program manager, the client and the grievant, if other than the client, the parent or guardian of a client if that person's consent is required for treatment, and all relevant staff.

(f) The client rights specialist shall purge the names or other client identifying information of any client involved in the grievance, other than the client directly involved, when providing copies of the report to persons other than the staff directly involved, the program manager or other staff who have a need to know the information.

**(4) PROGRAM MANAGER'S DECISION.** (a) If the program manager, the client, the grievant, if other than the client, and the guardian or parent, if that person's consent is required for treatment, agree with the report of the client rights specialist, and if the report contains recommendations for resolution, those recommendations shall be put into effect within an agreed upon timeframe.

(b) If there is disagreement over the report, the client rights specialist may confer with the client, the grievant, if other than the client, the parent or guardian of the client, if that person's consent is required for treatment, and the program manager or his or her designee to establish a mutually acceptable plan for resolving the grievance.

(c) If the disagreement cannot be resolved through the discussions under par. (b), the program manager or designee shall prepare a written decision describing the matters which remain in dispute and stating the findings and determinations or recommendations which form the official position of the program.

(d) The decision may affirm, modify or reverse the findings and recommendations proposed by the client rights specialist.

However, the program manager shall state the basis for any modifications which are made.

(e) The program manager's decision shall be given personally or sent by first class mail to the client and the grievant, if other than the client, the parent or guardian of a client, if that person's consent is required for treatment, and all staff who received a copy of the report of the client rights specialist. The decision shall include a notice which explains how, where and by whom a request for administrative review of the decision under s. HFS 94.42(2) may be filed and states the time limit for filing a request for administrative review.

**(5) TIME LIMITS.** (a) *Filing a grievance.* 1. A client or a person acting on the client's behalf shall present a grievance to the client rights specialist, a staff person or the program manager within 45 days of the occurrence of the event or circumstance in the grievance or of the time when the event or circumstance was actually discovered or should reasonably have been discovered, or of the client's gaining or regaining the ability to report the matter, whichever comes last.

2. The program manager may grant an extension of the 45 day time limit for filing a grievance for good cause. In this subdivision, "good cause" may include but is not limited to circumstances in which there is a reasonable likelihood that despite the delay:

- a. Investigating the grievance will result in an improvement in care for or prevention of harm to the client in question or other clients in the program; or
- b. Failing to investigate the grievance would result in a substantial injustice.

(b) *Processing grievances in non-emergency situations.* In situations in which there is not an emergency, the following time limits apply:

1. A staff person receiving a request for formal resolution of a grievance shall present the request to the program manager or his or her designee as soon as possible but not later than the end of the staff person's shift;
2. The program manager or his or her designee shall assign a client rights specialist to the grievance within 3 business days after the request for formal process has been made;
3. The client rights specialist shall complete his or her inquiries and submit the report under sub. (4) within 30 days from the date the grievance was presented to a program staff person; and
4. A written decision under sub. (4) (e) shall be issued within 10 days of the receipt of the report, unless the client, the grievant, if other than the client, and the parent or guardian of the client, if that person's consent is necessary for treatment, agree to extend this period of time while further attempts are made to resolve the matters still in dispute.

(c) *Processing grievances in emergency situations.* 1. In emergency situations, the following time limits apply:

- a. A staff person receiving the request shall immediately present the matter to the program manager or his or her designee;
- b. The program manager or designee shall assign a client rights specialist as soon as possible but no later than 24 hours after the request is received;
- c. The client rights specialist shall complete the inquiry and submit the report identified in sub. (4) within 5 days from the date the grievance was presented; and
- d. A written decision under sub. (4) (e) shall be issued within 5 days of the receipt of the report, unless the client, the grievant, if other than the client, and the guardian or parent of the client, if that person's consent is necessary for treatment, agree to extend this period of time while further attempts are made to resolve the matters still in dispute.

2. If after a preliminary investigation it appears that there is no emergency, the client rights specialist may treat the situation as a non-emergency for the remainder of the process.

**(6) PROTECTION OF CLIENTS.** If the client rights specialist determines that a client or a group of clients is at risk of harm, and the program has not yet acted to eliminate this risk, he or she shall immediately inform the program manager, the county department operating or contracting for the operation of the program, if any, and the office of the department with designated

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responsibility for investigating client grievances under s. HFS 94.42(1)(b)2. of the situation. If the situation continues to place the client or the group of clients at risk, the office designated under s. HFS 94.42(1)(b)2. shall take immediate action to protect the client or clients, pending further investigation.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96; corrections in (3)(a)1. and 2. made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

**HFS 94.42 Administrative review by county or state.**

**(1) RESPONSIBILITY FOR ADMINISTRATIVE REVIEW.** (a) 1. For a program operated by a county department or under contract with a county department, a requested administrative review of the program manager's decision under s. HFS 94.41(4)(e) shall be conducted by the director of the county department.

2. The director of a county department may conduct administrative reviews or may designate a specific person or persons from the county department's staff to conduct administrative reviews at the county level. If a staff person is designated to carry out a review, he or she shall prepare a final report for the approval of the director.

(b)1. For a program operating independently of a county department, including a program operated by a state agency, a requested administrative review shall be carried out by the office of the department with responsibility for investigating client grievances as provided in subd. 2.

2. The secretary shall designate a unit or office of the department to be responsible for conducting state level administrative reviews. The supervisor of the unit or office shall assign a specific staff person to act as grievance examiner for a review brought directly to the state from a program under subd. 1. or for a review brought to the state following a county level review under s. HFS 94.43. This office shall also be responsible for investigating complaints under s. HFS 94.51 relating to the existence or adequacy of grievance resolution systems.

**(2) REQUEST FOR ADMINISTRATIVE REVIEW.** (a) A request for administrative review of a program manager's decision shall state the basis for the grievant's objection and may include a proposed alternative resolution.

(b) 1. A request for administrative review may be made in writing, orally or through a person's alternative means of communication to the program manager by the grievant, the client, if other than the grievant, or the client's parent or guardian, if that person's consent is necessary for treatment.

2. If the request is made orally or through an alternative mode of communication, the program manager shall prepare a written summary of the request.

(c) When an administrative review is requested, the program manager shall transmit a copy of the original grievance, the report of the client rights specialist, the written decision and the request for review to the director of the county department or the state grievance examiner, as appropriate.

**(3) SWITCH TO INFORMAL RESOLUTION PROCESS.** At any time, if all parties agree, the formal resolution process and any applicable time limits may be suspended to allow the parties to attempt an informal resolution of the matter under s. HFS 94.40(4), facilitated by the individual conducting the review at that level of the process. If time limits are suspended, they shall begin running again upon request of any party that the formal resolution process be resumed.

**(4) GATHERING OF INFORMATION AND PREPARATION OF REPORT.**

(a) *Consideration of report and decision.* The individual conducting the administrative review shall consider the report of the client rights specialist and the decision of the program manager, but shall independently render an opinion by applying the appropriate provisions of ch. 51, Stats., ch. HFS 92 and this chapter to the facts and circumstances of the grievance.

(b) *Gathering of additional information.* 1. If the state grievance examiner or county director, or his or her designee, determines that additional information is necessary to complete the review, or if the client or person acting on behalf of the client has made a reasonable allegation that the findings of fact by the client rights specialist or the program manager are inaccurate, further inquiry into the circumstances underlying the grievance may be made, including but not limited to personal interviews, telephone calls and

inspection of equipment, facilities, records, documents and other physical or written materials which may be relevant.

2. Individuals gathering information in support of an administrative review shall have access to all relevant areas of the facility or other program named in the grievance during ordinary business hours or any other times specifically referenced in the original grievance, and shall have access to all records pertaining to the grievance.

3. If requested by the client or other grievant, the individual conducting the administrative review shall contact the client or other grievant.

4. If the circumstances underlying the grievance require an examination of clinical services, including but not limited to psychotherapeutic treatment, behavioral interventions and the administration of medication, the individual conducting the review may request that consultation on the matters in question be provided by an independent clinician with the experience and training appropriate for the inquiry.

(c) *Report.* 1. The individual conducting the review shall prepare a written report with findings of fact, conclusions based on upon the findings of fact and a determination of whether the grievance was founded or unfounded as defined in s. HFS 94.41(3)(a).

2. If the review has been carried out by a staff person designated by the county director, the staff person shall submit a draft report to the county director who shall issue a written decision in the matter.

3. If the review has been conducted by a grievance examiner appointed under sub. (1)(b)2., the report by the grievance examiner shall constitute the administrative decision at the state level.

4. If the grievance is determined to be founded, the decision shall identify the specific actions or adjustments to be carried out to resolve the grievance.

5. If the grievance is determined to be unfounded, the decision shall dismiss the grievance, pending any further request for review.

**(5) DISTRIBUTION OF COUNTY DIRECTOR DECISION.** (a) Copies of the decision by the county director shall be given personally or sent by first class mail to the program manager, the client, the grievant if other than the client, the client rights specialist, the parent or guardian of the client, if that person's consent is required for treatment, all staff who received a copy of the program manager's decision, and the office of the department designated under sub. (1)(b)2.

(b) If the parties agree with the decision, any recommendations shall be put into effect as soon as possible.

(c) If there is a disagreement over the decision, the parties may confer in a meeting facilitated by the individual conducting the review in an attempt to establish a mutually acceptable plan for resolving the grievance. Any applicable time limits shall be suspended while the parties confer, but shall begin running again if either party indicates a desire to resume the formal resolution process.

(d) The county director's decision shall include a notice to the client and the program director which explains how and where a state level review of the decision can be requested under s. HFS 94.43 and the time limits within which a request for further review must be filed.

(e) Any party shall have 14 days from the date the party receives a county director's decision under par. (a) to request a state level review under s. HFS 94.43 of the county director's decision.

**(6) DISTRIBUTION OF STATE GRIEVANCE EXAMINER DECISION.** (a) Copies of the decision by the state grievance examiner shall be given personally or sent by first class mail to the program manager, the client, the grievant, if other than the client, the client rights specialist, the parent or guardian of a client, if that person's consent is required for treatment, and all staff who received a copy of the program manager's decision.

(b) If the program manager, the client and the person acting on behalf of the client, if any, agree with the decision, any recommendations shall be put into effect as soon as possible.

(c) If there is disagreement over the decision, the parties may confer in a meeting facilitated by the state grievance examiner in an attempt to establish a mutually acceptable plan for resolving

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the grievance. Any applicable time limits shall be suspended while the parties confer, but shall begin running again if either party indicates a desire to resume the formal resolution process.

(d) The decision shall include a notice to the parties which tells how and where to request final state review under s. HFS 94.44 and states the time limits within which any request for final state review must be made.

**(7) TIME LIMITS.** (a) *Request for review.* A grievant shall have 14 days from the date he or she received the written decision of the program manager under s. HFS 94.41(4)(e) to request an administrative review.

(b) *Review in non-emergency situations.* 1. In situations in which there is not an emergency, the following time limits apply:

a. The program manager or his or her designee shall, upon receipt of a request for review, transmit by first class mail the materials identified in sub. (2)(c) to the county director or the office of the department designated under sub. (1)(b)2., as appropriate, within 7 days of receiving the request; and

b. The written decision on the review shall be issued within 30 days after the request for review was presented to the program manager.

2. The county director or the state grievance examiner in non-emergency situations may extend the time limit for completing the administrative review for up to 30 additional days with the consent of the program director, the client and the grievant, if other than the client, or upon a showing that additional time is necessary to complete the inquiry or evaluation of the matters presented for review.

(c) *Review in emergency situations.* 1. In emergency situations, the following time limits apply:

a. The program manager or his or her designee shall, upon receipt of a request for review, transmit by overnight mail the materials identified in sub. (2)(c) to the county director or the office of the department designated under sub. (1)(b)2., as appropriate, within 3 business days of receiving the request; and

b. The written decision on the review shall be issued within 10 days after the request for review was presented to the program manager.

2. If after a preliminary investigation it appears that there is no emergency, the state grievance examiner or county director may treat the situation as a non-emergency for the remainder of the process.

**(8) PROTECTION OF CLIENTS.** If the state grievance examiner or county director determines that a client or group of clients is at risk of harm, and the program has not yet acted to eliminate this risk, he or she shall take immediate action to protect the client or clients, pending further investigation.

**(9) PROTECTION OF CLIENT CONFIDENTIALITY.** The county director or state grievance examiner shall purge the names or other client identifying information of any client involved in the grievance, including the client directly involved, when providing copies of the decision to persons other than the client or a person acting on the client's behalf, the parent or guardian of the client, the staff directly involved, or the program manager or other staff who have a need to know the information.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96; correction in (4) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

#### **HFS 94.43 State level review of county administrative decision.**

**(1) REQUEST FOR REVIEW.** (a) For a program operated by or under contract with a county department, if the program manager, the client or the grievant, if other than the client, disagrees with the decision of the county director under s. HFS 94.42(5), that person may seek a review of the decision by the office or unit designated by the secretary under s. HFS 94.42(1)(b)2.

(b) If a grievant wishes to seek a state review of the county director's decision, he or she shall make the request to the program manager. The program manager shall forward the request and supporting materials to the office or unit designated under s. HFS 94.42(1)(b)2. in the same manner as provided in s. HFS 94.42(2)(c), with a copy sent by first class mail to the county director. All other parties shall make their request to the office or unit designated under s. HFS 94.42(1)(b)2., with copies of the

request given personally or sent by first class mail to the other parties.

**(2) PROCEDURES AND TIME LIMITS.** State review of a decision of a county director shall be conducted in the same manner and under the same time limits as an administrative review of a program operating independently of a county department under s. HFS 94.42.

**(3) DISTRIBUTION OF DECISION.** Copies of the decision by the state grievance examiner shall be given personally or sent by first class mail to the program manager, the client, the grievant, if other than the client, the county director, the client rights specialist and the client's parent or guardian if that person's consent is required for treatment.

**(4) NOTICE OF RIGHT TO FINAL STATE REVIEW.** The decision shall include a notice which explains how and where and under what time limits a party who disagrees with the decision of the state grievance examiner may seek final state review of the grievance under s. HFS 94.44.

**(5) PROTECTION OF CLIENT CONFIDENTIALITY.** The state grievance examiner shall purge the names or other client identifying information of any client involved in the grievance, including the client directly involved, when providing copies of the decision to persons other than the client, or a person acting on behalf of the client, the parent or guardian of the client, the staff directly involved, or the program manager or other staff who have a need to know the information.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

#### **HFS 94.44 Final state review. (1) DESIGNATION OF ADMINISTRATOR.**

The secretary of the department shall designate a specific division administrator or administrators to conduct final reviews of client grievances.

**(2) REQUEST FOR REVIEW.** (a) A grievant seeking final state review shall present his or her request to the program manager who shall transmit the request to an administrator designated under sub. (1) along with copies of the original grievance and all prior decisions and reports.

(b) A request by a program manager or county director for final state review shall be presented to the designated administrator or administrators on forms provided by the department and include with the request copies of the original grievance and all subsequent decisions and reports. A copy of the request for review shall be sent by first class mail to all other parties, including the client and the grievant, if other than the client.

(c) A request shall describe the portion or portions of the prior decision with which the party disagrees, the basis for the disagreement and any arguments or additional information the party wishes the department to consider.

(d) If the grievant is unable to prepare a written request for final state review, the program manager or his or her designee shall assist in completing the necessary forms.

**Note:** For copies of the form for requesting a final state review, write: Division of Care and Treatment Facilities, P.O. Box 7851, Madison WI 53707.

**(3) INFORMATION FOR REVIEW.** The administrator conducting the final state review may request that additional information be submitted by any party or may conduct the final review based solely on the information already received.

**(4) FINAL ADMINISTRATIVE DETERMINATION.** (a) The administrator shall prepare a final administrative determination for resolution of the grievance.

(b) The administrator shall affirm the prior decision unless it is contrary to state statutes or administrative rules.

(c) If the administrator determines that the prior decision should be modified or reversed, he or she shall state the basis for the modification or reversal and shall include in the final administrative determination specific instructions for carrying out any acts or adjustments being ordered to resolve the grievance and the timelines for carrying them out.

**(5) DISTRIBUTION OF DECISION.** (a) Copies of the decision shall be sent by first class mail to the grievance examiner, the county director, if the program was operated by or under contract with a county department, the program manager, the client, the grievant, if other than the client, the client rights specialist, the parent or guardian of a client, if that person's



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consent is required for treatment, and all staff who received a copy of the state grievance examiner's decision..

(b) The decision shall contain a notice to the parties that there is no further administrative appeal beyond this stage. The grievant shall be advised of the client's right to pursue additional consideration of the matter by bringing action in a court under s. 51.61(7), Stats.

**(6) TIME LIMITS.** (a) *Request for review.* A party shall have 14 days from the date he or she receives the written decision by the state grievance examiner under s. HFS 94.42(6) or 94.43 to request a final state review.

(b) *Non-emergency situations.* 1. In situations in which there is not an emergency, the following time limits apply:

- a. The program manager or his or her designee shall, upon receipt of the request for review by a grievant, transmit by first class mail the materials identified in sub. (2)(a) to the administrator designated under sub. (1) within 7 days of receiving the request;
- b. Other parties shall transmit by first class mail their request for review along with all of the materials directly to the department administrator within 14 days of receiving the decision of the state grievance examiner; and
- c. The designated department administrator shall issue a final decision on the review within 30 days after the request for review was presented to the program manager by the grievant or a request for review by any other party was received by the designated department administrator.

2. The department administrator in non-emergency situations may extend the time limit for completing the administrative review for up to 30 additional days with the approval of the program director, the client and the grievant, if other than the client, or upon a showing that additional time is necessary to complete the inquiry or evaluation of the matters presented for review.

(c) *Emergency situations.* 1. In emergency situations, the following time limits apply:

- a. The program manager or his or her designee shall, upon receipt of the request for review by a grievant, transmit by overnight mail the materials identified in sub. (2)(a) to the administrator designated under sub. (1) within 3 business days of receiving the request.
- b. Other parties shall transmit by overnight mail their request for review along with all of the materials directly to the department administrator within 7 days of receiving the decision of the state grievance examiner; and
- c. The final decision on the review shall be issued within 10 days after the request for review was presented to the program manager by the grievant or a request for review by any other party was received by the department administrator.

2. If after a preliminary investigation it appears that there is no emergency, the department administrator may treat the situation as a non-emergency for the remainder of the process.

**(7) PROTECTION OF CLIENTS.** If the department administrator determines that a client or group of clients continues at risk of harm and the program has not yet acted to eliminate this risk, he or she shall take immediate action to protect the client or clients, pending further investigation.

**(8) PROTECTION OF CLIENT CONFIDENTIALITY.** The department administrator shall purge the names or other client identifying information of any client involved in the grievance, including the client directly involved, when providing copies of the decision to persons other than the client or a person acting on behalf of the client, the parent or guardian of the client, the staff directly involved, or the program manager or other staff who have a need to know the information.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.45 Program coalitions.** (1) A group of programs may form a coalition to operate a combined grievance resolution system in order to share the costs of operating the system and to increase the independence and expertise of the individuals acting as client rights specialists.

(2) The coalition may establish a common process for conducting program level reviews and for offering informal resolution services, or may identify specific variations of the process as it applies to each coalition member, so long as each variation complies with this subchapter.

(3) The programs in the coalition may agree to share the costs of training existing staff to act as client rights specialists or may jointly

contract with one or more private individuals to provide this service upon request for any member of the coalition.

(4) A coalition shall operate in accordance with a written agreement signed by the member programs. The terms of the agreement shall provide for meeting the requirements of this subchapter in the operation of the grievance resolution system and for maintaining the impartiality of the client rights specialist.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.46 Multiple grievances by one client.**

(1) When a client or a person acting on behalf of a client has presented multiple grievances involving a variety of circumstances, the client rights specialist may establish an expanded timetable with specific priorities for investigating the allegations in a manner which appears most likely to deal with the issues in an efficient manner while addressing the most serious allegations first. This timetable may exceed the time limits in this subchapter, but shall include reasonable time limits for completing the investigation of each grievance. The client rights specialist shall notify the client or person acting on behalf of the client and the program manager of the timetable and priorities for resolution of multiple grievances within 10 days after beginning the inquiry.

(2) If there is an objection to the proposed timetable or priorities, the client rights specialist shall attempt to reach an informal resolution of the objection. If the client, person acting on behalf of the client or the program manager continues to object, that person may request a review of the issue by the county department or the state grievance examiner, whichever would normally hear an appeal of the program level review. In the absence of a request, the timetable and priorities established by the client rights specialist shall be controlling.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.47 Related grievances by several clients.**

(1) When 2 or more clients have presented individual grievances involving the same circumstances or a related group of circumstances relating to a single program, the client rights specialist may conduct the investigation as if it were one grievance.

(2) If the client rights specialist believes the investigation of the grievance will require more time to complete than is allowed under the time limits established in this subchapter, the client rights specialist shall establish a reasonable time limit for completing the investigation. The client rights specialist shall notify the clients, any person or persons acting on their behalf and the program manager of the time limit within 10 days after beginning the inquiry.

(3) If there is an objection to the proposed time limit for completing the investigation, the client rights specialist shall attempt to reach an informal resolution of the objection. If a client, any person acting on behalf of any of the clients or the program manager continues to object, that person may request a review of the issue by the county department or the state grievance examiner, whichever would normally hear an appeal of the program level review. In the absence of a request, the timetable established by the client rights specialist for completing the investigation shall be controlling.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.48 Grievances involving several programs.**

(1) If a client has presented the same grievance against several programs, each of which would ordinarily use a different client rights specialist, the client rights specialists from all the programs named in the grievance may:

- (a) Jointly conduct the investigation;
- (b) Delegate the task to one or more of the client rights specialists involved; or
- (c) Refer the matter to the county department or the office of the department with jurisdiction over the services offered by the program for an immediate county or first state review.

(2) If the client rights specialist or specialists believe the investigation of the grievance will require more time to complete than is allowed under the time limits established in this subchapter, the client rights specialist or specialists shall establish a reasonable time limit for completing the investigation. The client rights specialist or specialists shall notify the client, any person acting on the client's behalf and the program

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manager of the time limit within 10 days after beginning the inquiry.

(3) If there is an objection to the proposed time limit for completing the investigation, the client rights specialist shall attempt to reach an informal resolution of the objection. If the client, person acting on behalf of the client or the program manager continues to object, that person may request a review of the issue by the county department or the state grievance examiner, whichever would normally hear an appeal of the program level review. In the absence of a request, the time limit established by the client rights specialist or specialists for completing the investigation shall be controlling.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.49 Grievances presented on behalf of clients.**

(1) Any person who is aware of a possible violation of a client's rights under ch. 51, Stats., ch. HFS 92 or this chapter may present a grievance on behalf of the client.

(2) When a grievance is presented on behalf of a client by someone other than the client's parent or guardian, and the parent or guardian's consent is required for treatment, the client rights specialist shall meet with the client and the client's parent or guardian, to determine if the client or the client's parent or guardian, as appropriate, wishes the grievance investigated and resolved through the formal resolution process.

(3) If the client or, when the parent's or guardian's consent is required for treatment, the parent or guardian is opposed to using the formal resolution process, the client rights specialist may proceed with the investigation only if there are reasonable grounds to believe that failure to proceed may place the client or other clients at risk of physical or emotional harm. If there is no parent or guardian, or that person is not available, and the client is unable to express an opinion, the client rights specialist shall proceed.

(4) Where a grievance is filed on behalf of a client by a person who does not have a right to information about the client because of confidentiality statutes, the person may only receive confidential information as part of the investigation or resolution of the grievance with the informed consent of the client or his or her guardian, if there is one, the parent of a client who is under the age of 18, if the parent's consent is required for a release of information, or pursuant to an order of a court with jurisdiction over matters relating to the client under ch. 48, 51 or 55, Stats.

(5) In the absence of this consent, a person presenting a grievance on behalf of a client shall be informed of the determination of the client rights specialist and decision of the program manager, if any, regarding the merit of the grievance, but if the text of the determination contains confidential information to which the person is not privileged or for which a release has not been obtained, the text may not be disclosed to the person.

(6)(a) A person presenting a grievance on behalf of a client may request additional review of an adverse decision, up to and including final state review under s. HFS 94.44.

(b) If the client is opposed to requesting additional review, or when the parent or guardian's consent is required for treatment and the parent or guardian is opposed to requesting additional review, the reviewing officer may only proceed if the person presenting the grievance provides sufficient information to demonstrate that there are reasonable grounds for believing that failure to proceed may place the client or other clients at risk of physical or emotional harm.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96; correction in (1) made under s. 13.93(2m)(b)7., Stats., Register, April, 2000, No. 532.

**HFS 94.50 Interim relief.** (1) If the client rights specialist or a person conducting an administrative review of a grievance finds that interim relief is necessary to protect a client's well-being pending resolution of a grievance, a directive may be given to the program manager to modify the services being provided to the client to the extent necessary to protect the client.

(2) A directive for interim relief shall be designed to provide the necessary protection at the minimum expense to the program while protecting the rights of the client.

(3) A program manager may appeal a directive for interim relief to the department administrator designated under s. HFS 94.44(1).

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.51 Complaints related to the existence or operation of grievance resolution systems.** (1) Clients or persons acting on

behalf of clients under s. HFS 94.49 may register complaints relating to failure of a program to have a grievance resolution system as required by s. 51.61 (5) (b), Stats., and this subchapter, or relating to the operation of an existing grievance resolution system directly to the unit or office of the department designated to conduct administrative reviews under s. HFS 94.42(1)(b)2.

(2) If a complaint regarding the existence or operation of a grievance resolution system is filed with the department, a state grievance examiner shall conduct an investigation to determine whether a grievance resolution system meeting the requirements of s. 51.61(5)(b), Stats., and this subchapter is in place in the program.

(3) If the program lacks a grievance resolution system, or if the operation of an existing grievance resolution system is not in substantial compliance with the requirements of this subchapter, the state grievance examiner shall issue a report identifying the steps necessary for the program to implement a grievance resolution system that complies with this subchapter, with a timeline for implementation.

(4) The client or a person acting on behalf of the client or the program manager may seek a review of the state grievance examiner's report under sub. (3) by the administrator designated under s. HFS 94.44(1).

(5) If the program fails to implement the required steps in the expected time period, the matter shall be referred by the grievance examiner to the appropriate unit or office of the department or the county department with responsibility for oversight of the program for action related to certification, licensure or reimbursement or for censure of the program.

(6) Nothing in this section shall be read as prohibiting or limiting in any way the beginning of an action under s. 51.61(7) or (7m), Stats., or any other civil or criminal prosecution by or on behalf of a client.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.52 Investigation by the department.** The department may investigate any alleged violation of this chapter and shall, in accordance with ch. HFS 92, have access to treatment records and other materials and to individuals having information relating to the alleged violation.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96; correction made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

**HFS 94.53 Support for development of grievance resolution systems.** (1) The department shall prepare materials, including but not limited to model policies and program guidelines, which describe methods for implementing the elements necessary for a grievance resolution system which is in compliance with this subchapter.

(2) The secretary of the department shall designate an office or unit of the department which shall be responsible for providing or contracting for the provision of technical assistance to programs with questions about the development, operation and maintenance of consistency of grievance resolution systems, and for providing or arranging for the provision of training for persons who have been designated to act as client rights specialists and county directors or staff designated to carry out administrative reviews under s. HFS 94.42.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.54 Units of time.** All time limits in this subchapter are expressed in calendar days unless otherwise noted.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

## APPENDIX F

### UNITED STATES CODE TITLE 25 INDIAN CHILD WELFARE ACT CHAPTER 21

#### CHAPTER 21 - INDIAN CHILD WELFARE

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§ 1901 Congressional findings

**§ 1901 Congressional findings.** Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds -

(1) That clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power \* \* \* To regulate Commerce \* \* \* with Indian tribes<sup>1</sup>" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) That Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) That there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) That an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) That the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

**§ 1902. Congressional declaration of policy.** The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

**§ 1903. Definitions.** For the purposes of this chapter, except as may be specifically provided otherwise, the term -

(1) "child custody proceeding" shall mean and include -(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated; (ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship; (iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and (iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption. Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 1606 of title 43;

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary

<sup>1</sup> So in original. Probably should be capitalized.

## APPENDIX F

because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of title 43;

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) "Secretary" means the Secretary of the Interior; and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

#### **§ 1911. Indian tribe jurisdiction over Indian child custody proceedings.**

(a) *Exclusive jurisdiction.* An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) *Transfer of proceedings; declination by tribal court.* In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) *State court proceedings; intervention.* In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) *Full faith and credit to public acts, records, and judicial proceedings of Indian tribes.* The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

#### **§ 1912. Pending court proceedings.**

(a) *Notice; time for commencement of proceedings; additional time for preparation.* In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: Provided,

That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) *Appointment of counsel.* In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.

(c) *Examination of reports or other documents.* Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) *Remedial services and rehabilitative programs; preventive measures.* Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) *Foster care placement orders; evidence; determination of damage to child.* No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) *Parental rights termination orders; evidence; determination of damage to child.* No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

#### **§ 1913. Parental rights; voluntary termination.**

(a) *Consent; record; certification matters; invalid consents.* Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) *Foster care placement; withdrawal of consent.* Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) *Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody.* In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) *Collateral attack; vacation of decree and return of custody; limitations.* After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through

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fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

**§ 1914. Petition to court of competent jurisdiction to invalidate action upon showing of certain violations.**

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title.

**§ 1915. Placement of Indian children.**

(a) *Adoptive placements; preferences.* In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) *Foster care or preadoptive placements; criteria; preferences.* Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with —

- (i) a member of the Indian child's extended family;
- (ii) a foster home licensed, approved, or specified by the Indian child's tribe;
- (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) *Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences.* In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: Provided, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) *Social and cultural standards applicable.* The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) *Record of placement; availability.* A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

**§ 1916. Return of custody.**

(a) *Petition; best interests of child.* Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the

court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 1912 of this title, that such return of custody is not in the best interests of the child.

(b) *Removal from foster care home; placement procedure.* Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this chapter, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

**§ 1917. Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court.**

Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

**§ 1918. Reassumption of jurisdiction over child custody proceedings.**

(a) *Petition; suitable plan; approval by Secretary.* Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b) *Criteria applicable to consideration by Secretary; partial retrocession.*

(1) In considering the petition and feasibility of the plan of a tribe under subsection (a) of this section, the Secretary may consider, among other things:

- (i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;
- (ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;
- (iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multiracial occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 1911(a) of this title are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 1911(b) of this title, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 1911(a) of this title over limited community or geographic areas without regard for the reservation status of the area affected.

(c) *Approval of petition; publication in Federal Register; notice; reassumption period; correction of causes for disapproval.* If the Secretary approves any petition under subsection (a) of this section, the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a) of this section, the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) *Pending actions or proceedings unaffected.* Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 1919 of this title.

**§ 1919. Agreements between States and Indian tribes.**

(a) *Subject coverage.* States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) *Revocation; notice; actions or proceedings unaffected.* Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

**§ 1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception.** Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

**§ 1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child.** In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard.

**§ 1922. Emergency removal or placement of child; termination; appropriate action.** Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

**§ 1923. Effective date.** None of the provisions of this subchapter, except sections 1911(a), 1918, and 1919 of this title, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after November 8, 1978, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

**§ 1931. Grants for on or near reservation programs and child welfare codes.**

(a) *Statement of purpose; scope of programs.* The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare

codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to -

(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;

(2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;

(4) home improvement programs;

(5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

(6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;

(7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and

(8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

(b) *Non-Federal matching funds for related Social Security or other Federal financial assistance programs; assistance for such programs unaffected; State licensing or approval for qualification for assistance under federally assisted program.* Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act (42 U.S.C. 620 et seq., 1397 et seq.) or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this chapter. The provision or possibility of assistance under this chapter shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV-B and XX of the Social Security Act or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

**§ 1932. Grants for off-reservation programs for additional services.** The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to -

(1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;

(2) the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and

(4) guidance, legal representation, and advice to Indian families involved in child custody proceedings.

**§ 1933. Funds for on and off reservation programs.**

(a) *Appropriated funds for similar programs of Department of Health and Human Services; appropriation in advance for payments.* In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into agreements with the Secretary of Health

and Human Services, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health and Human Services: Provided, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

(b) *Appropriation authorization under section 13 of this title.* Funds for the purposes of this chapter may be appropriated pursuant to the provisions of section 13 of this title.

**§ 1934. "Indian" defined for certain purposes.** For the purposes of sections 1932 and 1933 of this title, the term "Indian" shall include persons defined in section 1603(c) of this title.

**§ 1951. Information availability to and disclosure by Secretary.**

(a) *Copy of final decree or order; other information; anonymity affidavit; exemption from Freedom of Information Act.* Any State court entering a final decree or order in any Indian child adoptive placement after November 8, 1978, shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show - (1) the name and tribal affiliation of the child; (2) the names and addresses of the biological parents; (3) the names and addresses of the adoptive parents; and (4) the identity of any agency having files or information relating to such adoptive placement. Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.

(b) *Disclosure of information for enrollment of Indian child in tribe or for determination of member rights or benefits; certification of entitlement to enrollment.* Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

**§ 1952. Rules and regulations.** Within one hundred and eighty days after November 8, 1978, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter.

**§ 1961. Locally convenient day schools**

(a) *Sense of Congress.* It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

(b) *Report to Congress; contents, etc.* The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health and Human Services, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from November 8, 1978. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

**§ 1962. Copies to the States.** Within sixty days after November 8, 1978, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this chapter, together with committee reports and an explanation of the provisions of this chapter.

**§ 1963. Severability.** If any provision of this chapter or the applicability thereof is held invalid, the remaining provisions of this chapter shall not be affected thereby. For more information on public policy issues, contact NICWA staff member David Simmons by e-mail [desimmons@nicwa.org](mailto:desimmons@nicwa.org) or by phone at (503) 222-4044 ext. 19

## APPENDIX G

### INSTRUCTIONS FOR OBTAINING FORMS – CHILD PLACING AGENCIES

Child Placing Agencies are required to use some of the forms listed below to comply with licensing rules. The other forms, while not required by rule, are designed to contain all the information required by the licensing rules and are recommended for use. The majority of the forms are available from the DHFS/DCFS/BRL website [http://dhfs.wisconsin.gov/rl\\_dcfs/INDEX.HTM](http://dhfs.wisconsin.gov/rl_dcfs/INDEX.HTM) (click on Forms & Publications in the red navigation bar on the left of the screen). Forms may be reproduced as needed. If you do not have access to the Internet, or if the form you want is not available, a DMT-25 Forms/Publications Requisition must be completed and sent to the address below. Be sure to indicate the form number and the form title on the DMT-25 and fill in your name and address in the "SHIP TO" area of the requisition; this information must be provided in order for the request to be filled.

Department of Health and Family Services  
Division of Children and Family Services  
Forms Manager  
P.O. Box 8916  
Madison, WI 53708-8916

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<b>Form #</b>	<b>Form Title</b>
CFS-74	Adoption Assistance Agreement
CFS-100A	ICPC Placement Request
CFS-100B	ICPC Report on Child's Placement Date or Change of Placement
CFS-103	Child's Personal Record
CFS-107	Foster Home Agreement Child Placed in Out-of-Home Care by Agency
CFS-111	Foster Home License
CFS-116	Foster Parent Insurance Program Loss of Claim or Damage
CFS-117	Foster Parent Insurance Program Verification of Claim
CFS-136	Formal Adoption Application
CFS-140	Adoptive Family Placement Agreement
CFS-149	Family History Questionnaire Medical / Genetic
CFS-149A	Family History Questionnaire Medical / Genetic – Pregnancy and Delivery Information
CFS-297	Request for Exception
CFS-362	Licensing Checklist – Child Placing Agency
CFS-369	Personnel Record Checklist – Child Placing Agency
CFS-380	Foster Child Record Checklist – Child Placing Agency
CFS-381	Foster Family Home File Checklist – Child Placing Agency
CFS-787	Child Foster Care Licensing Checklist
CFS-834	Foster Care Uniform Rate Setting
CFS-847	Application to DHFS Exceptions Panel for Exception to Ch. HFS 56 or Ch. HFS 38 (Foster Home / Treatment Foster Home Licensing)
CFS-871	Treatment Foster Home License
CFS-872A	Information for Foster Parents, Part A
CFS-872B	Information for Foster Parents, Part B
CFS-997	Medical Services Consent
CFS-1590	Voluntary Placement Agreement
CFS-2091	Child's Death, Serious Injury or Egregious Incident Notification
CFS-2132	Permanency Plan
CFS-2142	Staff Continuing Training Record-Child Welfare Programs
CFS-2146	Serious Incident Report
CFS-2186	Foster Parent Notice – Confidentiality of Records
CFS-2187	Foster Home Licensure Notification
CFS-2189	Foster/Group Home Child Placement Notification
CFS-2191	HFS 12 Negative Action Notice
CFS-2198	Foster Parent Insurance Program Damage Claim Checklist
CFS-2259	Adoptive Placement Checklist – Child Placing Agency
CFS-2343	Shift-Staffed Treatment Foster Home Exception Application Checklist
CFS-2386	Foster Home Information for WiSACWIS
DDE-6100	Client Rights Limitation or Denial Documentation.
DMT-25	Forms/Publications Requisition
EXS-263	Rehabilitation Review Application
HFS-64	Background Information Disclosure
PFS-101	It shouldn't hurt to be a child
PFS-105	Adoption Assistance Information
PFS-142	Understanding the Uniform Foster Care Rate
PFS-602	Applicant/Licensee Rights & Responsibilities
PSL-660	Guidelines for AIDS/HIV Infections & Other Communicable Diseases



